commonweal

The Editors
OUR SEMINARIES

ONE DOLLAR

OCTOBER 23, 1981

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Abortion, the Constitution & the human life statute

FRANCIS J. FLAHERTY

ALSO IN THIS ISSUE: QUEBEC'S POLITICAL FUTURE • COMPENSATING THE JAPANESE • MEXICO'S LEFT
REVIEWS BY WALLACE FOWLIE • J. HILLIS MILLER • JOHN A. COLEMAN

What now for the MX?

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Correspondence

On the waterfront

New York, N.Y.

To the Editors: I enjoyed John Logue's "The Law of the Sea at Low Tide" [Aug. 28]. As a longtime observer of the Law of the Sea Conference, I share his indignation at the greed and shortsightedness of many if not all of the geographically fortunate nations in the conference. I also share his skepticism about the workability of an International Seabed Authority which gives each of thirty-six nations a veto with respect to some of its most important functions.

A generous law of the sea treaty could do a great deal to bridge the dangerous gap between North and South and to set the stage through major international cooperation for real disarmament. If the conference incorporates the Common Heritage Fund proposal in the draft convention at next spring's New York session it would mark a major turning point in the international system.

The Conference should not leave the initiative to the Reagan administration. It should do its best to make the treaty what it was supposed to be: a significant force for economic and social progress.

RICHARD HUDSON
Executive Director, Center for War/Peace Studies
Editor, *Disarmament Times*

Strange seabedfellows

Wilmington, Del.

To the Editors: I agree with Dr. John Logue's analysis in "The Law of the Sea at Low Tide" [Aug. 28] that the God-given wealth of our world's oceans is on the verge of being "ripped-off" by the fat and the greedy.

What a sea change has occurred since 1967 when Arvid Pardo inspired the world with his landmark UN speech calling for ocean wealth to be used as "The Common Heritage of Mankind," especially for the poorest peoples. Ambassador Pardo echoed President Johnson's call in 1966 for using the oceans "for the benefit of all mankind."

Today we find that the coastal nations, aided and abetted by the oil companies, have laid claim to two hundred miles of ocean, calling it an "Exclusive Economic Zone," with no obligations to anyone.

Today we find the Reagan administration trying to grab the only thing left as the "Common Heritage," the mineral nodules in the deep ocean more than two hundred miles from shore and under fifteen thousand feet of water. This spring the Reagan Law of the Sea treaty negotiators were instructed to "go out on strike" from the United Nations Conference on the Law of the Sea over the demand that the world give moral, and legal, sanction to unilateral exploitation of the deep seabed minerals by American mining companies. They are still "out on strike" because their demands have not been met.

An honest man can no more give sanction to these grabs of the "Common Heritage" than he can say that a rotten fish does not stink. Dr. Logue is an honest man who has held fast to this truth: that the God-given wealth of the oceans must be used to feed the hunger of all of God's human creation, not just for the appetite of the rich few. Mark me down—I stand with Dr. Logue and the Common Heritage.

PHILLIP JOHN COLLINS

Who's orthodox?

Park Forest, Ill.

To the Editors: I agree with Dr. Garth Gillan [Letter, Sept. 25] that my assessment of Schillebeeckx's *Ministry* is based on anthropological assumptions (though not to the exclusion of the historical, as he appears to imply). I do not, however, know what he means by a "gospel" that is somehow separate from the human response to the event of God in the world. This is precisely the central issue which contemporary theology joins. The critique of ecclesiastical institutions is based on the recognition of their full humanity. At least in a church bound by the teaching of the first chapter of Genesis (that humankind is made in the image and likeness of God) and by the doctrine of the incarnation, to assess church institutions "in the light of the gospel" is precisely to take their history and anthropological structure seriously. This is exactly why I suggest we are on the eve of reformation. The ultimate issue of orthodoxy is not the issue of the orthodoxy of theologians, but whether the defenders of ecclesiastical institutions are themselves orthodox as long as they refuse historical and anthropological critique of those institutions.

RALPH A. KEIFER

TV runs amonk

West Redding, Conn.

To the Editors: According to the latest news, "the Monastery" is alive and well at Spencer, Massachusetts, in spite of ABC's sorry TV program shown under that title on August 20 [Editorial, Sept. 11]. In fact, thousands of other monasteries all over the world are equally alive and well.

Men and women join these monastic communities freely. They are not running away from anything, but they are running after something: an environment in which every detail is geared towards a single-minded quest for God. They seek—and find—God in a lifestyle cultivated in the church since before even the Apostles' Creed was formulated. And Christians continue to find in monasteries not an abstract idea of God, but a meaningful life, a scope for their talents, and a way of serving the human family. The TV program in question showed little or nothing of this.

Predictably, a disproportionate seg-

(Continued on page 605)

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IT'S STILL NX FOR THE MX

THE BEST ARGUMENT for Ronald Reagan's proposed plan to deploy the MX missile is that it isn't Jimmy Carter's proposed plan to deploy the MX. Mr. Carter had backed a "shell game," in which 200 MXs would be shuttled around a system, alternatively described as a "race track" or "drag strip," of 4,600 silos. This would have been one of the largest construction efforts known to humanity, a military multiple of the pyramids in which 100 billion gallons of water and two million tons of cement would be consumed in burying missiles rather than pharoahs. The Reagan proposal is that the U.S. deploy only one hundred of the MXs, placing the first three dozen in superhardened silos now used by aging Titan missiles but taking a few more years to figure out where to put the rest.

Well, breathe a sigh of relief. Half a Maginot Line is better than one. We would like to be grateful. Unfortunately, the president's MX decision came wrapped with a number of other proposals that waste money and push the arms race forward, while the MX decision itself leaves the country with a lot of unanswered questions about the assumptions behind the scrapped proposal and the real purposes of the current one.

At least one element in the adminstrations's strategic armaments package was welcome. Improvements in the control, command, and communications system that allows Washington to direct nuclear forces even in case of war should reduce the temptation of a "decapitating" surprise attack on the centers of civilian and military leadership and should limit the chances of runaway or accidental escalation in nuclear war.

But also included in the president's package was a resurrected B-1 bomber, or rather one hundred of them, at the going rate of $200 million apiece. To B-1 or not to B-1, that has been the question for all too long. Jimmy Carter said "no" in 1977, but like much of what Jimmy Carter said, it didn't stick. There is a good argument that the bomber leg to America's strategic triad is outmoded in the missile era. There is a good argument that the existing B-52s, despite their shortcomings, can fill in satisfactorily, especially if equipped with cruise missiles. There is a good argument that B-1s would have a life span of only a few years before being rendered obsolete by the famous "Stealth" aircraft. On the other hand, there is the argument that because the B-1 is already off the drawing boards, it is a quick way to send the Kremlin a message about American resolve. And there is the argument that the B-1 is a much better plane than the B-52, which is probably true. But steak is better than hamburger, and $20 billion is a bit steep for another one of those "messages." The B-1 is like Muhammed Ali; this time it ought to stay retired. Perhaps Congress could just award it an "A" for effort and ask it go to away.

What won't go away are those questions about the MX. The Carter proposal was made on the basis of a theory. The theory was that the new payload and accuracy of

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Soviet missiles made the Russians capable of knocking out America's land-based ICBMs while keeping some of their missiles in reserve. Since our air- and submarine-based missiles could not "take out" those remaining Soviet missiles but decimate Soviet cities instead, the only response an American president would have to a "limited" Soviet first strike would be to unleash the kind of exchange that would totally destroy both societies. Knowing that an American government might balk at obvious suicide, Moscow might be tempted into just such a first strike, or somehow exploit the threat of one.

The more this theory has been openly discussed, the more holes appeared in its underlying assumptions—assumptions about the likely effectiveness of Soviet weapons in actual use rather than test situations, about the likelihood of Soviet leaders gambling on that effectiveness or on the possibility that the U.S. wouldn't simply launch its own missiles "on attack" before they were destroyed on the ground or, alternatively, go ahead with a total or limited use of our air and submarine forces.

The new proposal of the administration implicitly admits that this theory is, at least to some degree, no longer compelling. If the Soviet "counterforce' capacity was all that great, thirty-six MXs in extra hardened silos aren't much of a response. At the same time, the administration has not renounced or modified the theory itself. What we still have is a questionable theory in search of a new weapon system.

We also still have a questionable weapon in search of new theory. There were always two parts to the MX proposal as it emerged from Carter's Defense Department. One was the "shell game," the multiple protective shelter (MPS) basing scheme which would have allowed U.S. missiles to survive a Soviet first strike. The other was the MX missile itself, bigger, more accurate, carrying ten warheads, which would have (supposedly) given the U.S. the option of aiming at hardened Soviet silos instead of cities. The problem, of course, was that the MX could itself become a first-strike weapon against the Soviet Union, presenting them with the very same threat to which the whole MX-MPS was the American response. The reply to that objection was that our limited number of MXs did not, in fact, pose such a threat to Russia.

But what now? The new administration proposal implies that either (a) the notion of a successful Soviet counterforce attack has been discounted, or (b) the military is admitting the U.S. can't do much for the present about saving our land-based missiles in any case. If the first is true, then why does the U.S. itself need a counterforce weapon like the MX—except to use first? If the second is true, then why put the MX into a vulnerable, even if reinforced, silo—unless we are considering using it first? Although the limited number of proposed MXs still provides a little reassurance, these questions are no doubt being asked in Moscow.

Of course, the newest plan for the MX may have the simplest of all explanations. It may only be another reflexive surrender to the technological dynamic of the arms race—let's have it, "just in case"—and another refusal to say a clean "no" to the military lobbyists and planners. Behind this whole prolonged MX-up has been one great illusion: that the valid goal of nuclear stability, not subject to the temptation of first strikes, can be achieved through technology rather than politics. What sense there was in the Carter proposal disappeared with SALT II. And if it is stable deterrence that the U.S. really wants, it won't be found in "big-bird" planes to launch the MX, or in ABMs to shelter it, or in laser beams to defend it. Whatever the role of such technologies, the real route to stability still passes by way of the negotiating table.

SEMINARIES

When the Empress Maria Theresa of Austria saw her consort, Francis I, robed, sceptered and miraculously gloved "as the ghost of Charlemagne" prior to his installation in 1764 as Holy Roman Emperor, she reportedly broke into "endless laughter." Thus far, even to its holders, had sacred authority fallen.

Now comes the announcement that the Vatican wants an investigation of U.S. seminaries — and the bureaucrats who conceived the idea might well heed here our little parable of laughter. Similar investigations are now afoot in Brazil and the Philippines.

The inquiry has many seminary officials worried. With reason. In no area more than that of theological education has recent Vatican legislation exhibited less transcultural understanding and a more parochial, Roman provenance. Item: last year's promulgation of the apostolic constitution, *Sapientia Christiana*, which though mainly directed at pontifical institutions (such as the Jesuit theological schools, as well as St. Mary's in Mundelein and Baltimore, etc.), strained to include departments of theology in all Catholic institutions like Notre Dame as well. This particular legislation was of a piece with the canon in the proposed new Code of Canon Law (canon 64 or 767, depending which revised schema one refers to) which says, "Those who teach any theological courses or courses connected with theology in institutions of higher learning require a canonical mission." Translated, this means any theology teacher in a nominally Catholic college would be, as it were, speaking in the bishop's name — and few American bishops desire to have their authority so engaged. Though it made sense in totalitarian countries, as a hedge against state interference, *Sapientia Christiana* carried other disabilities for the American context. The American Catholic Theological Society committee, headed by Father David Burrell of Notre Dame, which studied the document criticized it for a failure in subsidiarity, excessive particularity, its culturally conditioned cast, ecclesiastical elitism, and weakness in due process.

If the minds behind such a document in Rome have the task of finally evaluating the American bishops' investigation, there is cause for alarm. More preposterous or laughable yet is the underlying reason for the study which some supposedly in-the-know allege: that it's those demon women in the seminary that must be driven out — women who are (horror of horrors) spiritual directors, faculty members, and (worse case)

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students for the ministry. Preposterous indeed — except the woman-issue does seem to obsess certain Vatican minds, viz., in the latest, revised questionnaire to prospective bishops, the *first* question asks their opinion about women's ordination! One might well imagine that in deciding on episcopal qualification, other matters would take precedence. Not so.

On the other hand — think positive! — one can be grateful to Archbishop John R. Roach, president of the bishops' conference, for taking charge of the investigation and insisting, against Vatican resistance, that it follow procedures "similar to those used by secular and religious accrediting agencies." As in the case of *Sapientia Christiana*, which has in fact led to fruitful dialogue and new understanding between theologians and the bishops — and will likely lead to a new level of collaboration between them — the current study of seminaries could actually lead not only to sensible consolidation and better use of talent, but a clearer, more profound recognition of the kind and quality of ministerial education that the people and the world urgently require of their priests, preachers, and future bishops. Like many things institutionally Catholic that start off on the wrong foot, this one too, if properly and intelligently handled, could turn the tables on its conceivers — many of whom, given the likely length of the study, will no doubt be, by the time it is finished, resting in the bosom of Father Abraham.

We would only add this: laypeople have an enormous stake in the quality of seminary education. For generations now in this country, we have had to suffer the consequences of our own indifference to the near-destruction of quality theological education for the clergy that followed the paranoid purge of seminaries conducted for some thirty years after the turn-of-century modernist crisis. The laity paid a steep price for the result: for decades seminary education was intellectually comatose — and it's only now barely come out of that state, still blinking. We hope the lesson's been learned, that history won't repeat. This time round, we hope Bishop John A. Marshall of Burlington, Vermont, who will head the investigation, will make it an examplar of collegiality and co-responsibility with the laity — whose children will be taught, fathered and mothered in the faith, by ministers of true intelligence, wit, and wisdom.

Wartime relocation

A TANGIBLE GESTURE

COMPENSATION FOR THE JAPANESE?

I ONCE WORKED with a west coast Japanese-American who had served in the army during World War II while his parents and younger sisters were incarcerated in a federal internment camp. One day, over lunch, he told us that his family had lost their business and property as a result and that one of his relatives had died, separated unwillingly from her children and relatives. We were sympathetic except for one co-worker. He had been a combat veteran and remarked that while no offense was intended, surely the attack on Pearl Harbor had frightened a good many Americans into thinking that an invasion of California was near. Besides, he added, the imprisoned Japanese were a lot safer than he had been as a rifleman. The Japanese-American merely shrugged. "All I'm saying," I remember him answering, "is that this government did something terrible to my people and they owe us."

I barely gave the subject much thought until last summer when I attended several hearings of the Commission on Wartime Relocation and Internment of Civilians at Golden Gate University in San Francisco. The commission had been established by Congress in the waning days of the Carter administration to "determine whether any wrong was committed" after Franklin Delano Roosevelt's Executive Order 9066 allowed 110,000 Japanese-Americans to be taken from their homes and relocated—a popular euphemism of the time—to camps in California, Oregon, Washington, Wyoming, Arizona, New Mexico, North Dakota, Montana, Texas, Louisiana and Arkansas. 160,000 Japanese in Hawaii were left alone inasmuch as they were deemed vital to the islands' economy and therefore the war effort. And since the whole affair was so blatantly racist it is no wonder that German- and Italian-Americans on the west coast were permitted to go scot free. (Or that about 850 Aleuts were also taken from their homes by the U.S. Army and imprisoned in southeastern Alaska while non-Aleuts in the Aleutian chain went untouched.)

The hearings had opened weeks before in Washington and then moved on to Los Angeles. And but for Senator S. I. Hayakawa's remark that internees had been on a "three-year vacation" and that the notion of reparations "makes my skin crawl with shame and embarrassment"—virtually all the speakers in all three cities spoke of their debasement, their fear, and often, the shattering consequences internment had on their families and livelihoods. Hayakawa, charged one former internee, had never been in a camp and was allowed to work in Chicago during the war. And said another: "Of course no monetary compensation could possibly pay for the hardships we endured. But the most important thing, I think, is that the government should not do this ever again to its people."

Despite Hayakawa and a few other demurrers most asked for some form of redress. Some mentioned $25,000 per victim but it seemed to be more of a battle cry than a definitive amount. Others recognized the impracticality of so much money being wrested from the Reagan administration and sought instead to suggest alternatives such as granting scholarships to internees and their children, awarding social security for the years wasted, establishing a museum to record the tragedy, calling for a televised Japanese-American version of "Roots" or "Holocaust." And a lawyers group urged that the Supreme Court decisions upholding the forced removal of citizens and law-abiding aliens without any due process be reversed.

It is a safe guess that the commission members will try to

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render a compassionate and understanding finding. What is less predictable is how the Reagan administration will treat the question. Some may no doubt point to the 1948 settlement in which claimants were paid ten cents on the dollar for their losses of property although as Mineo Katagiri of the United Church of Christ in San Francisco pointed out, "How can we be repaid fully for the properties lost, the health destroyed, the education denied, the employment opportunities lost?. . . . We are talking about a tangible gesture that can be seen and gauged which says to us that a genuine act of contrition has taken place in the heart of this great nation."

MURRAY POLNER

(Murray Polner, editor of Present Tense, *is the author of the forthcoming* Branch Rickey: A Biography.)

Report from Mexico

WHO'S THE 'SICK MAN'?

COMPETITION IN A ONE-PARTY STATE

Mexico City

LONG MALIGNED as the "sick man" of Mexico, the political left here is attempting to heal itself in time to make a vigorous showing in next July's presidential and congressional elections.

Elitism, personalism, and—above all—ideological dogmatism have driven leftists to savage each other verbally, trade gunfire in the streets, and purge apostates with such frequency that new parties—breakaways from old ones—pop up like mushrooms in a dank cave.

Cannibalism on the left complemented by the incoherence of the pro-business, Catholic-leaning National Action party on the right has enabled the Institutional Revolutionary party (PRI) to capture every presidential, gubernatorial, and senatorial contest since its founding a half-century ago.

More than a political *apparat*, the PRI controls federal, state, and municipal governments, runs an escalator to power for the ambitious, flourishes as a patronage trough, and manipulates—through captive unions and pliant organizations—blue-collar workers and impoverished peasants. Skill in converting cooptation from an art form to an exact science makes it seem like "Mayor Daley writ large," according to a prominent political scientist.

In a direct challenge to the PRI, the leaders of the Euro-communist-oriented *Partido Comunista Mexicano* and four small socialist parties have agreed to cast aside differences and combine into a United Party of the Mexican Left—a move expected to be ratified by their followers.

The five "founders" have signed a communiqué that excoriates the "belligerency" of President Reagan's foreign policy, Mexico's self-serving "financial bourgeoisie," and the regime's "selective repression and assassination of independent union chiefs." It calls for "scientific socialism" as the instrument of a class struggle designed to convert the means of production into "collective property," stimulate political participation, and create a new Mexican "free of the prejudices and inequalities generated by private property."

More a collection of tenets than a blueprint for government, this document also endorses "land and liberty for the peasantry," "social justice," and "defense of national sovereignty"—principles with which few would disagree.

The PRI will capture next year's elections even if it means stuffing ballot boxes—a tactic it has mastered. Besides, the Communists (110,000) and their four partners (105,000) count as adherents only a fraction of Mexico's twenty-eight million electors. However, if it gets on its feet, a robust fusion party could cause a throbbing headache for this country's complacent, often arrogant, political establishment.

To begin with, the new organization's numbers will surely swell as many of the sixteen other "socialist" parties join up. Entities as diverse as the Popular Socialist party (75,000), a PRI satellite, and the Trotskyite Revolutionary Party of the Workers (7,000) have publicly flirted with affiliation, although the latter may be spurned owing to its "conflictful" nature.

The success of an amalgamated left hinges on whom it selects in late-October as its presidential nominee. The front-runner is Heberto Castillo Martinez, a white-maned, fifty-three-year-old civil engineer who established the Mexican Workers party. Through books, articles, and debates, he has distinguished himself as a trenchant and relentless foe of official policy—notably in energy and agriculture. He also boasts the reputation of remaining uncorrupted in a system suffused by peculation. His candidacy will draw support from other parties as well as average voters, half of whom sat out the 1979 congressional election.

Castillo realizes that the left, now composed of students, intellectuals, disgruntled bureaucrats, and a handful of hoary trade unionists, must appeal to workers if it is to present a credible alternative to the power elite. Accomplishing this requires circumventing the *"charros"* or cowboys, as the PRI-manipulated labor bosses are contemptuously called, to reach the rank-and-file. PRI's grip on the unions may be slipping as Fidel Velázquez, the choleric, octogenarian head of the Mexican Workers Confederation, nears the end of his career. Political evangelism in the union halls should win converts because the living conditions of the masses have deteriorated even amid the oil boom.

The decision last month by the Popular Action Movement (MAP) to cast its lot with the new left-wing party will boost its stock among workers. The MAP's political commission embraces leaders of independent unions in the nuclear power industry and on university campuses, as well as Rafael Cordera, a prominent leftist ideologue.

Ironically, the emergence of a sturdy, unified left could prove a blessing in disguise to the governing party. First, it would trigger a spirited campaign, thus challenging the charge that democracy exists year-round in Mexico with but one

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exception: election day. Second, a heated race should draw more citizens to the ballot box and—symbolically, at least—renew their ties to a system that has bred apathy, disgust, and a growing belief that violence must precede change. Third, it may also keep young leftists busy passing out manifestos rather than munitions. Fourth, the PRI will be forced to rethink its program—now a hash of tired ideas garnished by revolutionary clichés— to respond to the politically savvy Castillo, who would be the most issue-oriented candidate since Lázaro Cárdenas successfully pursued the presidency in 1934.

Finally, a determined opponent could spur the Institutional Revolutionary party to revitalize its creaky political machine. This effort has already been launched by Javier García Paniagua, the party's peripatetic president who enjoys close relations with the military and one day may reach the presidential palace himself.

PRI claims "not to fear" a fusion party for reasons cited above and because of the centrifugal forces that may yet explode a consolidated left. After all, there are at least three tendencies within the new organization: (1) Marxist-Leninists, (2) Cardenists who exhibit a nationalist, anti-Marxist perspective, and (3) those quasi-Marxists who favor a struggle for "national sovereignty" in association with elements of the bourgeoisie in order to resist American "imperialism," In commenting on the conflicting currents within the purportedly unified Left, one veteran observer told the *Latin American Newsletters:* "If you put five mice together you don't get a cat."

Still, a confluence of factors—a thirty-percent inflation rate, massive unemployment, budget cuts, a growing chasm between "haves" and "have-nots," and ubiquitous corruption—make party bigwigs squeamish about the future. They realize that PRI's claim to represent a majority of Mexicans would be undermined if abstentions remained high while the left and the right each won upwards of ten percent of the vote.

Economic considerations weighed heavily in the Sept. 25 designation of Miguel de la Madrid Hurtado as the ruling party's presidential candidate. A Harvard-educated moderate who is popular within the private sector, he now serves as Planning and Budget Minister and is the architect of the nation's ambiguous and disjointed Global Development Plan. Most observers believed that the choice of the next president would follow the up-coming North-South summit in Cancún. But the gravity of the problems afflicting the country combined with the prospect of a credible leftist opponent to hasten the selection.

A healthy showing by competitors could endanger the ruling party's retention of the presidency in 1988 or 1994. Meanwhile, the rejuvenated opposition would clamor for public jobs long monopolized by PRI. The specter of losing—or even sharing—power may prompt the government to interpret its complex, contradictory election code so as to thwart the fusion. This maneuver will confront the left with the option of running under the Communist banner—a move certain to diminish its appeal and vote totals.

Such heavy-handedness by a regime that incessantly trumpets its devotion to democracy will increase cynicism, abstentions, and unrest, thereby exposing the PRI as the real "sick man" of Mexican politics.

GEORGE W. GRAYSON

(George W. Grayson, author of the newly published The Politics of Oil *[University of Pittsburgh], teaches government at the College of William and Mary.)*

Of several minds: *Abigail McCarthy*

WHAT PERSUADES?

BETWEEN THE RHETORIC & THE REALITY . . .

WHAT PERSUADES? What wins people over—in the dictionary definition of the word — to a course of action? That's a question we should all be pondering just now if we wish to forestall nuclear and ecological disaster and the spread of poverty, of despair, and upheaval. Or, in less apocalyptic terms, if we're interested in electing other than one-issue people, upgrading public education, saving the nation's colleges, getting true equality for women, helping families or farmers—in any number of the worthwhile things that need doing.

When Barbara Ward died this year, Robert McNamara, the retiring president of the World Bank, wrote a tribute in which he emphasized her gifts of eloquence and the power of *persuasion*. Certainly he was only one of the movers and shakers of this world who had been moved to action, in part, by that remarkable woman who had made the cause of development her own. An economist and thinker, she excelled in presenting the abstract in such concrete terms that her readers or hearers could *see* what needed to be done, what steps should be taken. She was a source for Adlai Stevenson's speeches on foreign aid; she counseled John Kennedy during his presidency; she so influenced Lyndon Johnson that he declared with typical hyperbole that he read her book on the world's poor every day "like the Bible." She was equally influential in her native England, in Europe, Africa, and at the UN; she was often behind the scenes in Rome and eventually a member of the papal commission on Justice and Peace, which might never have come into being without her years of patient spadework.

How did she do it? How did she *persuade*? There were many ways, of course, but appeal to enlightened self-interest was certainly one of them. In the pamphlet *Peace and Justice in the World*

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written for the bishops of England and Wales and published posthumously, (to which I alluded in my last column in the September 25 *Commonweal*), she points out that sharing with the poor countries of the world can serve the interests of the rich countries. She uses an example of which she had intimate knowledge—the economic intervention of the United States in a devastated Europe after World War II.

"In the Marshall plan, they gave away two percent or more of their total production of goods and services for over five years to friends and enemies alike—and at that time they were only half as wealthy as they are today," she writes, "This was the beginning of the long prosperity of the '50s and the '60s, and not least to benefit were the Americans themselves."

Many remember Robert McNamara as the apparently hard-headed former businessman and Secretary of Defense during the war in Vietnam, who appeared tirelessly and loyally before congressional committees supporting his president's course of action in terms of numbers—of "body count," for example. An associate says he was converted to the concept of development as a solution to the relationship of the industrial countries with the poor nations by what he came to see as the failure of diplomacy and the futility of war. He became the most humanitarian of World Bank presidents. He went from a factual perception of the dangers posed by an economically unbalanced world to an understanding of the way rich nations benefited by the development of poor nations and, finally, to an almost missionary zeal in promoting an understanding of the needs of Third-World nations—a progression in involvement which must have been most devoutly approved by his friend, Barbara Ward.

Predictably, his successor, A.W. (Tom) Clausen, former chairman of the Bank of America, by no means a charitable institution, is less inclined to stress the *needs* of poor nations as a rationale for making "soft" loans to them through the World Bank's arm, the International Development Association. It is clear that he knows the mood of the currently ungenerous American public and that he is aware of the unrealistic economic pieties and the buzz words of the Reagan administration. He is not as convinced as was McNamara that better understanding of the mission of the bank and the plight of poor nations will move America to finance it.

"It's a two-prong thing," he told a financial reporter, ". . . the other one, I think is a more practical, pragmatic prong, and that is the vested-interest prong. That is, it is really in the vested interest of the United States . . . to give funds through a professional, proven, non-political instrumentality . . . for economic development in the Third World countries so that we can have more jobs here in the United States, to widen our markets, our wares and services and products. For every dollar that the United States gives to the World Bank, $3 comes back; thirty-six percent of the exports of the United States goes to Third World countries. . . ." Clausen also pointed out in his first speech to an annual meeting that money from the IDA is not "a welfare check. It is a productive investment." Almost twenty countries (like Thailand and the Ivory Coast), recipients only a few years ago, "have not only graduated from low-income to middle-income economies, but today are vigorous and valuable trading partners with the developed nations."

When I last saw Barbara Ward she was disappointed that her book, *The Lopsided World*, which she had been commissioned to write by an ecumenical organization, had had so little distribution through church channels and so little impact in getting the support of church people in this country for Third World initiatives. "I thought so many would rally when they understood," she said sadly. It seems to me significant that a decade later, again addressing a church audience, she did not stop with her message that "our Lord makes plain this absolute priority of sharing and selfless giving" or with informing her readers but pointed out that giving can be practical as well.

The church, in the current phrase, has "opted for the poor." The pope, in his wide-ranging labor encyclical, has summoned us to close the gap between rich and poor on a global scale, to use the world's resources responsibly, to make technology and economics serve all humanity—to mention only the largest topics. Between the rhetoric and the reality lies an enormous task of persuasion. Those who are morally committed must consider how to move others to the necessary action. Demonstration has its uses: it dramatizes issues, creates community among the protestors, and a measure of excitement for increasingly jaded spectators. Exhortatory lobbying creates a little guilt and is self-satisfying for the righteous lobbyist—as is the public excoriation of "economic malefactors." But are these devices enough to *persuade*, to move people to action?

ABIGAIL McCARTHY

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Church/world watch

A new era of social teaching

J. Bryan Hehir

JOHN PAUL's encyclical, *On Human Work*, appeared the week after I had devoted a column to the need for critical commentary on the social teaching. This is at least an implicit invitation to practice what I have preached.

The new encyclical, written to commemorate the ninetieth anniversary of the first social encyclical, *Rerum Novarum*, provides ample content for analysis. The pope sets out to review and extend the Catholic social tradition. In doing so, he uses his distinctively personal style, weaving through the long document the central theme of the human person as the core value in the world of work and in the range of economic questions which surround work today. These questions take him into a commentary on liberal and "socialized" forms of ownership; evoke the strongest affirmation of support for unions yet found in Catholic teaching; produce a tight explanation why property rights are relative not absolute claims; and involve a recurring description of how the personal dimension of work is related to national, international, and religious issues.

In its principal affirmations about these topics, the encyclical is a familiar document. But there are emphases and openings which give a new edge to the tradition. The needed critical commentary will find this growing edge and its relationship to recent theological thought on property, social systems, and injustice the most fertile area for exploration.

In the confines of a column, I will concentrate on the changing historical context reflected in the latest of the social encyclicals. Ninety years is a young tradition as Catholicism measures its history, but there are clear points of development in the tradition thus far. Looked at from this perspective, *On Human Work* lies close to the beginning of a new period.

The historical setting for *Rerum Novarum* was the Industrial Revolution in Europe and the United States. The "social question" for Leo XIII (1891) and Pius XI (1931) was the impact of industrialization on the dignity and rights of workers. The theme which dominated the social teaching for the first half of this century was the achievement of economic justice within a nation.

The social teaching from Pius XII through Paul VI had a different focus. Paul VI caught the spirit of the development in his statement that the social question had become a worldwide phenomenon. The issue from the 1940s into the 1970s became economic justice among the nations or, as the 1971 Synod described it, international social justice. The "North-South" question is highly visible in the teaching of John XXIII, Paul VI, and Vatican II. As the scope of the social question expanded, so did the categories of Catholic social thought: in 1961 John XXIII spoke of the "international common good." An ancient concept was given new substance to meet a new range of problems.

The second stage, or international period, of the social teaching yielded in turn to a third stage of transnational issues which appear for the first time in Paul VI's apostolic letter, *The Eightieth Year* (1971), and are prominent themes in *On Human Work*. This development from national through international to transnational issues is a cumulative process. The national issues of economic justice did not disappear: the farm workers of Texas and California and the textile workers of the South will find John Paul's ringing endorsement of unionization as relevant as Polish workers will find it. Nor, to cite the obvious, has the international social question even approached resolution. At a time when the poor countries are caught between high oil prices, depressed markets for their products and inadequate food production, the Reagan administration seems intent on installing supply side economics at the World Bank, limiting the developing countries' access to the International Monetary Fund, and reconsidering the U.S. role in the International Development Association (the global version of the safety net for the truly needy).

In addition to these two dimensions of the social question, however, there are new characteristics sufficiently important to mark a new period of development. The 1970s saw the emergence in a qualitatively new way of both transnational actors and transnational problems on the international scene. The former were symbolized by the multinational corporations and the latter included problems of hunger, population, and environment. Neither the new actors nor the new problems dissolved the reality of the nation state. Both, however, placed new constraints on the state and posed new problems for it. Paul VI and John Paul II both recognized the change these new forces introduced into international relations; neither has provided detailed moral norms for the transnational level which one finds in Catholic thought for national issues of social justice. This is the kind of frontier where critical commentary on the social teaching is needed.

At the point where international and transnational forces meet, political scientists use the concept of linkage. It describes the way in which foreign policy decisions feedback into domestic politics. The immigration question is an example of a linkage issue; to accept new immigrants is to touch a range of domestic policy questions. Pope John's concept of the international common good is designed to allow for a weighing of these linkage questions in moral as well as political terms. The same

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LAWYERS SEE THE ISSUE IN A DIFFERENT WAY

Abortion, the Constitution, & the human life statute

FRANCIS J. FLAHERTY

AS EQUAL RIGHTS AMENDMENTS advocates know, it is no easy matter to muster two-thirds of both houses of Congress and three-quarters of the state legislatures to agree on a constitutional amendment. Recognizing this, anti-abortionists have recently developed an ingenious legal strategy to replace or at least to supplement their unavailing efforts to overturn by constitutional amendment the Supreme Court's legalization of abortion in *Roe v. Wade* eight years ago.

This strategy, known as the human life statute or the Helms-Hyde bill, would—by a simple majority of both houses of Congress—declare a fetus to be a person from the moment of conception. The bill was developed by former *Harvard Law Review* editor Stephen H. Galebach, now a twenty-eight-year-old attorney for the firm of Covington & Burling in Washington, D.C.. The constitutionality of the proposed statute depends upon the extent of congressional power under the Fourteenth Amendment. Section 5. The pertinent part of that Amendment, provides in its entirety: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." The "article" referred to is the Fourteenth Amendment, with all its majestic and vague provisions for due process and equal protection.

Discerning the meaning of Section 5 requires delving into the legislative history of the Fourteenth Amendment and interpreting relevant Supreme Court decisions. It is, for lawyers and constitutional scholars, a standard legal problem. Like many such problems, its focus is not on the substance or the practical effects of Galebach's proposal, nor does it involve discussion of the moral or social aspects of abortion. Rather, its sole concern is *process*: Does Congress have the constitutional power to pass such a bill? Does the bill intrude on the jurisdiction of the federal courts and consequently violate the doctrine of the separation of powers? If abortion were illegal today, and Galebach attempted to legalize it through the same strategy, the issues confronting lawyers and constitutional scholars would be the same ones they now face with the anti-abortion human life statute. Lawyers simply fret more over process than over practical effect; there is no better example of this preoccupation with process than an aphorism of—I believe—Justice Robert H. Jackson who, in a reference to the authoritativeness of Supreme Court decisions, said "We are not final because we are right. We are right because we are final."

The Galebach proposal is atypical only in that these issues of process, long the sole province of the legal academy, have spilled onto the front pages and into the minds of the public. But the abortion issue, as discussed in law schools and law journals, has been primarily an issue of process for the eight years since *Roe v. Wade*. Lawyers discuss the procedural aspects of the abortion question with as much vehemence and contentiousness as the public debates its substantive aspects, and although these legal issues do not raise questions as daunting as the definition of human life, the questions they do address—the separation of powers among the coordinate branches of the federal government, the anomalous position of an unelected federal judiciary in a democracy—are by no means minor. Moreover, to see the abortion issue through the eyes of the legal profession is to gain a glimmer of a not unheroic function which that profession occasionally performs for our society: safeguarding the long-run integrity of our constitutional system, regardless of the advantages and disadvantages of such protection for the advocates of a particular political cause. Persons caught in the maelstrom of such a cause will often employ whatever means are available, with no great thought or weight given to the structural implications of such methods for the future of our governmental system. That chore is left to their lawyers, and to their opponents' lawyers, and to the constitutional scholars who, though they might fight bitterly among themselves, share a common concern for, or at least an awareness of, such implications.

Although this is an interesting and lucky division of social labor, these legal concerns are ones we should all share. Unfortunately, the issue of abortion—the moral, philosophi-

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cal, and social aspects of which are almost too much to handle—also has more than its share of legal conundrums. *Roe v. Wade* made as big a splash in the law journals as in the general press, albeit for very different reasons, and Galebach's human life statute has added a second legal controversy over abortion even while the *Roe v. Wade* issue remains unresolved. *Roe* raised troubling questions of judicial encroachment upon legislative prerogatives and launched a desperate search (not for the first time in our country's history) for principles of judicial restraint. The human life statute presents the opposite problem: legislative assumption of some of the power of constitutional interpretation, a power traditionally reserved to the courts.

1. 'Roe' & judicial review

DESPITE WHAT WE learn in grammar-school civics classes, the American constitutional system is fragile. The First Amendment, for example, guarantees all Americans freedom of speech, but the breadth of that guarantee has depended on whether we were involved in a hot war or a cold war or at peace, on the economic condition of the country, on evolving social ideals, and on the composition of the Supreme Court. Even such a seemingly incontrovertible doctrine as that of the separation of powers, far from having been chiseled in granite in Philadelphia in 1787, is a fluid and unsettled precept written on water and vulnerable to erasure if the political tides are right. Nor are exogenous social conditions or political trends the only influences on the Constitution. Intellectual trends among constitutional scholars—a novel and attractive theory of free speech, or of the role of the judiciary in our society—can filter down to the courtrooms and expand or contract rights and duties which seemed unalterable a generation before.

But the paucity of legal tools with which to fashion constitutional decisions is the primary contributor to the fragility of our system. Given the frequent lack of legislative history and the cloudiness of constitutional phrases, judges in many cases simply do not have enough to go on to make their decisions. Naturally enough, this problem is most pressing with the Supreme Court, the bulk of whose docket concerns such delphic constitutional riddles as: Is obscenity included in the "speech" protected by the First Amendment and, if not, what is obscenity? Does "due process" mandate that a welfare recipient is entitled to a hearing before his benefits are cut off, or will a prompt post-termination hearing suffice? Does the placement of two prisoners in a cell designed for one violate the Eighth Amendment's ban on "cruel and unusual punishment"?

The quoted constitutional language is, to put it mildly, inconclusive (or, as lawyers say, not "outcome-determinative"). To fill this void, the justices often rely on hunches, instinct, and personal political predilections; and constitutional doctrines consequently become unsettlingly elastic.

Because the core of the law is certainty—a good lawyer, goes the old shibboleth, is one who can predict what a judge will decide in a given case—lawyers and judges have for centuries searched for simple rules with which to tame all these wild and wayward constitutional phrases and to shrink the subjective element in judicial decision-making. Success depends on the area of law at issue, but nowhere is the search more crucial or more frustrating than in the field of judicial review, that area of legal scholarship which attempts to find the proper line of demarcation between the legislative and the judicial functions. It is a venerable quest, dating at least from 1803, when in *Marbury v. Madison* Chief Justice John Marshall established the Constitution as the highest law of the land and the Supreme Court as its final arbiter. Like most questions which have been asked for centuries, the answer to the question of the proper scope of judicial review is both difficult to find and necessary to know. Simply put, the question is: Given that the Supreme Court has the power to decide cases "arising under" the Constitution, by what rules do we decide what those cases are?

Because the federal judiciary is in an anomalous position as the only unelected branch of government in a democratic nation; because the process of constitutional amendment required to overturn a Supreme Court decision is so arduous; and because constitutional decision-making is so elastic, this is the most fundamental issue in American law. And it is the most perplexing. It may be difficult to decide whether obscenity is speech cognizable under the enigmatic First Amendment, but at least it is clear that a law which prohibits obscene books implicates that Amendment's free-speech guarantee. We thus know that obscenity is a constitutional issue and, because of *Marbury*, we also know that the Court has the authority to decide the case. This won't make defining obscenity any easier, of course, but at least we know that the courthouse was the proper building to enter. Legal scholars searching for rules to govern judicial review are denied even this small solace; their concern is the *constitutionalness* of a given issue, a question which must be answered before one considers the *constitutionality* of competing views of that issue. If the police break into your house without a warrant, the Fourth Amendment is clearly involved, and if the government tries you twice for the same crime, the double-jeopardy clause of the Fifth Amendment is implicated. But what about abortion? Or homosexuality? Does the Constitution speak to these issues and, if so, where?

THEORIES ABOUND. Professor John Hart Ely of Harvard Law School suggests in his recent *Democracy and Distrust* (Harvard University Press) that courts should defer to other branches of government in all cases except those undoing a specific constitutional right clearly discernible from the text, or a right of a "discrete and insular" minority that has been historically un- or under-represented in the political process. Thus, courts should stick closely to the text of the Constitution, and should let the political process prevail except in those cases—such as that of a discrete and insular minority—where that process itself seems faulty. Abortion, Ely contends, falls under neither exception. It is certainly not mentioned in the

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Constitution, and women, far from being a minority, comprise the majority of voters in this country and can elect pro-abortion legislators if they so desire. In fact, as Ely notes, the New York legislature was well on its way to liberalizing its abortion law in 1973, when the Supreme Court's announcement of *Roe v. Wade* rendered that issue moot.

Laurence H. Tribe, also of Harvard Law School, takes a more expansive view of the proper judicial role. He notes that such vague constitutional phrases as "due process" and "equal protection" *invite* imaginative judicial construction; that identifying discrete and insular minorities is not as easy as it seems; and that process-oriented theories of judicial review belie the substantive nature of the Constitution. The guarantee of free speech, for example, is not merely a procedural device to insure that through wide-open and robust debate the truth will emerge, but also a recognition that free self-expression is vital for self-fulfillment. In other words, there is implicit in the Constitution a model of man, a desire to preserve from governmental depredations the social climate conducive to full human flowering. Faithfulness to that model, Tribe argues, may require less-than-strict adherence to the text of the Constitution.

Advocates of judicial restraint, such as Ely, also stress the unaccountability of courts to the electorate. "Judicial activists," on the other hand, note the insularity and thus the impartiality of judges, and the lesser trustworthiness of legislators beholden to their constituents and caught up in the hurly-burly of politics.

This debate has simmered and flared for two centuries. *Roe v. Wade* is only the most recent log thrown on the fire. In a seminal piece in the *Yale Law Journal* a few months after that decision, Professor Ely was aghast. *Roe v. Wade* purported to find a right to abortion in the Constitution, a right associated with the right of privacy. There is, of course, no right of privacy bestowed on the American people by the Constitution, but, as Justice Blackmun noted in *Roe*, certain constitutional provisions do implicate a person's privacy. The Fourth Amendment right to be free from unreasonable searches and seizures, for example, and the Fifth Amendment freedom from coerced self-incrimination, clearly have aspects of privacy. But abortion, Ely persuasively contends, does not involve privacy in its commonsense meaning as those amendments do. Moreover, the core question of the abortion controversy, the humanity of the fetus, means that the rights of two persons may be involved in the abortion decision; and when more than one person's rights are involved, privacy is, by definition, irrelevant. Consequently Ely concludes that the creation of a right to abortion is bald judicial legislation: "What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution, the framers' thinking respecting the specific problem in issue, any general value from the provisions they included, or the nation's governmental structure."

Ely has no quarrel with the *Marbury v. Madison* doctrine of judicial supremacy in matters of constitutional interpretation; his claim rather is that *Roe* is not constitutional interpretation. The Constitution, except under an attenuated and farfeteched reading, simply has nothing to say about abortion; and, given that fact, a public policy toward abortion must be fashioned, as befits a democracy, in the pulling and hauling of the political process. Abortion is not an issue which "arises under" the Constitution.

THIS IS A persuasive argument. Freed from the duty to anchor themselves to the text of the Constitution, the Supreme Court can become a super-legislature beholden to no constituency, an Oligarchy of Nine which discovers in the margins of the Constitution rights that no mere citizen can perceive. It is the anti-democratic nature of this danger that most rankles Ely and other advocates of judicial restraint. If there is any overarching principle in the Constitution, they contend, it is the principle of democracy; it is both ironic and unconstitutional for courts, under the guise of constitutional interpretation, to frustrate the will of the people and to interfere with the processes of democracy by manufacturing rights not discernible from the text of that document. There are many issues with which the Constitution does *not* deal, goes the argument, and abortion is clearly one of them.

Next to "The New Property" by Charles Reich (of *The Greening of America* fame), Ely's article is the most famous and influential legal analysis of the past decade, a notoriety only partly explained by its admitted persuasiveness. Ely's criticism of *Roe* recalled the *Lochner* era, the period from 1905 to the dawn of the New Deal, when successive conservative Supreme Courts struck down, with little constitutional justification, myriad social welfare laws establishing minimum wages and maximum hours for selected groups and occupations, and regulations for prices and products. The *Lochner* era was a judicial attempt to perpetuate the laissez-faire economic policies of early capitalism, an attempt to stave off, Canute-like, the rising tide of the mixed economy. The *Lochner* case itself, which invalidated a New York labor law limiting the working hours of bakers, is infamous in legal circles; it has become an eponym for judicial interference with public policy under the guise of constitutional interpretation.

Ely's accusation was clear: *Roe* was a liberal *Lochner*. Like Justice Peckham and his brethren in 1905, the Burger Court in 1973 made a constitutional decision with only the most tenuous of moorings to the Constitution.

There are those who disagree with Ely, and their arguments have some force. The Constitution is not to be read as literally as a statute, they maintain; it is a living document, a blueprint for society, whose meaning changes with succeeding generations. Moreover, the Bill of Rights (the first ten amendments) are, as the late William O. Douglas has said, an anti-government manifesto meant to protect the individual from tyrannical governmental acts. Where the effect of such actions on the individual can be particularly devastating—as in abortion laws—courts must strictly scrutinize such actions to prevent a tyranny by the majority. The judicial activists also point to the Ninth Amendment's explicit command that "the enumeration in the Constitution, of certain rights, shall not be

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construed to deny or disparage others retained by the people." Constricted constitutional construction is, in this view, more akin to judicial abdication than to judicial usurpation of legislative powers. Moreover, such historical episodes as Watergate, the McCarthy era, and the Red Scare raids of A. Mitchell Palmer are trotted out to prove the inherent tendencies of the political branches to excess; and such high points of judicial history as *Brown v. Board of Education* and the early gender discrimination cases of the Burger Court are cited as proof of courts' foresight and moderation.

Advocates of judicial restraint easily counter these assertions with constitutional language and historical examples of their own. As is the way with legal scholars, yellowed pages from the *Congressional Record* and the *Federalist Papers*, as well as from hoary Supreme Court decisions and tracts penned by venerable legalists, fly back and forth in support of these varied and conflicting claims.

WHETHER ONE agrees with the judicial activists or the advocates of judicial restraint, the debate over judicial review is probably a good thing. There are very few external restraints on the judicial aggrandizement of power in this country. The constitutional provisions which insure the insularity and impartiality of federal judges, such as those granting judges life tenure and forbidding diminution of their salaries, also serve to render them unaccountable to the popular will. Impeachment of federal judges is exceedingly rare, mainly because Article I, Section 3 of the Constitution renders that process exceedingly difficult. Thomas Jefferson dismissed the impeachment procedure as "a bungling way, an impractical thing, a mere scarecrow." The constitutional amendment process is also cumbersome, and it requires an extraordinary national consensus; only four times in the nation's history has an amendment been passed which is directly traceable to a desire to overturn a Supreme Court decision. (The most recent amendment of that type is the Twenty-Sixth, passed in 1971, which forbids denial of the right to vote on account of age to persons eighteen and older. That Amendment reversed *Oregon v. Mitchell*, in which the Supreme Court invalidated certain sections of the Voting Rights Act as unconstitutional violations by Congress of states' right to set voting requirements.)

However, some legal scholars believe these restraints on the judiciary are sufficient and, therefore, that the debate over judicial review is not as critical to the future of the Republic as it may seem. They contend that the *threat* of constitutional amendment or of impeachment effectively deters judicial overreaching despite the infrequency with which those devices are employed; that judges, by and large, are sensitive to the undemocratic nature of their offices and thus try not to overstep their mandate; and that the more contrary a Supreme Court decision is to the sense of the nation, the more easily can it be reversed by constitutional amendment.

However one may judge the adequacy of these external restraints, self-imposed restraints are often just as important as external ones. This being the case, the legal community should continue to search for rules to govern judicial review. That

By using Section 5, Galebach hopes to remove the 'absence of consensus' on which the 'Roe' decision illogically rests.

community's concern for proper process in reaching a social decision is also beneficial; somebody should think about these things, and who better than the profession directly responsible for them? Most pro-abortionists do not care whether the Supreme Court or the New York State legislature legalizes abortion, so long as it is legalized; their opponents are similarly indifferent to whether prohibition of abortion is achieved by an act of the Texas legislature, a constitutional amendment, or a congressional declaration like Galebach's proposal. But for lawyers these issues of process are the real problem of abortion. Whether or not the Supreme Court has the institutional right to replace the judgment of the Texas legislature on the matter of abortion is a question which is logically anterior to the question of whether the Texas legislature was substantively correct in its judgment. Finding no such right, many legal scholars never reach the latter issue.

2. Galebach's conundrum

IN 1895, THE Supreme Court in *Pollock v. Farmer's Loan & Trust Company* held the federal income tax unconstitutional. There arose widespread opposition to the decision, and there was an attempt—similar to the human life statute—to overturn the case by a congressional act. President Taft and Senator Elihu Root, though both believed *Pollock* to be erroneous, nevertheless insisted that only by constitutional amendment could the case be reversed (which is what eventually happened in 1913, when the Sixteenth Amendment was ratified by the states). Alpheus Thomas Mason, Emeritus Professor of Jurisprudence at Princeton, has written that Taft and Root "were wary of encouraging the notion that Congress could reverse an objectionable [Supreme Court] decision by an ordinary act, lest the popular image of identity between the judicial version of the Constitution and the Constitution itself be fatally damaged."

Taft and Root were reminding their angry colleagues that whether for good or for ill, John Marshall established judicial supremacy in constitutional interpretation in this country in *Marbury v. Madison*. Some foreign nations follow a legislative supremacy model, in which the legislature defines and interprets the terms of that nation's constitution. But under our system the Supreme Court is the final definer of constitutional terms, and only by constitutional amendment can that interpretation be overridden.

But there is a somewhat fuzzy exception to this general rule, and it is upon this exception that Stephen Galebach has seized.

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The Galebach proposal is a good example of the malleability, the open texture of the law. It relies on Section 5 of the Fourteenth Amendment, which bestows upon Congress the power to "enforce" that Amendment "by appropriation legislation." The extent of that power is uncertain, and that uncertainty is compounded by the cloudiness of the two key terms in the Fourteenth Amendment, "due process" and "equal protection," surely the most notoriously vague phrases in the constitutional lexicon.

GALEBACH'S SIMPLE contention is that Section 5, whatever its extent, is broad enough to empower Congress to declare that there is a significant likelihood that human life begins at conception. To support this view, Galebach cites a number of Supreme Court voting rights cases handed down between ten and twenty years ago. The two most important are *Lassiter v. Northampton County Board of Elections* and *Katzenbach v. Morgan*.

In *Lassiter* the Court upheld a North Carolina literacy requirement for voting against a claim by a black plaintiff that such a requirement was racially discriminatory. Writing for the Court, Justice Douglas held that although certain types of literacy requirements for voting might be unconstitutional, they are in general "neutral on race, creed, color, and sex" and justified by the legitimate state interest in extending the franchise only to those citizens who are adequately informed on the issues and the candidates. "In a society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues," Douglas opined, "a state might conclude that only those who are literate should exercise the franchise."

Six years later in *Katzenbach v. Morgan*, the Court upheld a congressional law which had the practical effect of forbidding the states (primarily New York) from denying the vote to Americans of Puerto Rican descent who were educated through at least the sixth grade in schools in Puerto Rico where the language of instruction was Spanish. New York state, whose English literacy test was rendered invalid by this federal law, challenged it as an unconstitutional usurpation by Congress of the historic right of the states to set voting requirements.

In an opinion by Justice Brennan, the Court upheld the law under Section 5. Brennan wrote:

> It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interest that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school.

Justice Brennan stressed the superior fact-finding capacity of Congress in this kind of matter; unlike the "specially informed legislative competence" of Congress, the Supreme Court and other courts are inappropriate institutions to make extensive investigations into such factual issues.

Putting these two cases together, Galebach concludes that Supreme Court precedents approve a very expansive reading of congressional power to interpret and enforce the Fourteenth Amendment. He reasons that in *Lassiter* the Court held that literacy tests for voting do not violate the Fourteenth, yet in *Morgan* the Court allowed Congress to forbid a New York literacy test on the basis of Section 5 of that Amendment. The Court, in short, allowed Congress *by an ordinary act* to reverse the Court's holding in *Lassiter*. Congress cannot interfere in state matters—such as voting requirements—unless it has a basis for doing so expressly granted to it in the Constitution. This is so because the basic tenet of federalism is that the national government is one of limited powers, with all other powers, expressed or unexpressed, reserved to the states. By allowing Congress to strike down New York's literacy test on the basis of Section 5, the *Morgan* Court was granting Congress a very active role in interpreting the Fourteenth Amendment because it is only on the basis of that Amendment that Congress's invasion of New York's right to set voting requirements can be justified.

GALEBACH ARGUES that Congress can overturn *Roe v. Wade* much as it overturned *Lassiter*. By using its superior fact-finding capacity, Congress can educe the testimony of scientists and physicians and conclude that human life probably begins at conception. If a fetus is a human being, then it is a "person" under the Fourteenth Amendment, and deserving of that Amendment's protections. Armed with this new knowledge, states can then prohibit abortions, claiming that their interest in protecting the probably human fetus justified these restrictions. If the human life statute passes and the inevitable legal challenge to it is made, states prohibiting abortions will be in a much better position than the state of Texas was in *Roe v. Wade*. The *Roe* Court merely held that (1) as a matter of legislative history, the term "person" in the Fourteenth Amendment was not intended by that Amendment's framers to include fetuses; (2) that although the term "person" in the Fourteenth clearly includes human beings, "those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus" concerning the humanity of the fetus; and (3) *in the absence of such a consensus*, the right of a woman to have an abortion outweighs, within certain limits, any state interest in protecting the fetus.

The consensus of the legal community is that the Galebach proposal is a cute but clearly unconstitutional strategem.

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A remarkably silly decision, *Roe* thus held that because the fetus could not definitely be determined to be human, the Court would treat it as nonhuman—a nonsensical argument which goes against the grain of all Anglo-American law. Through legalistic legerdemain, the Justices transmogrified their lack of knowledge into the justification for their decision. A jury in a criminal trial must be sure beyond a resonable doubt that a defendand is guilty before sending him up the river for a few years, but the Supreme Court, at least in the area of abortion, need only be doubtful of a fetus's humanity in order to permit a woman to treat it as non-human.

By using Section 5, Galebach hopes to remove the "absence of consensus" on which the *Roe* decision illogically rests. If the human life statute passes, states will be free to place greater restrictions on abortion than currently allowed, up to and including criminalization. Many states seem eager to do so; at least eighteen state legislatures have submitted "memorials" to Congress urging passage of a constitutional amendment prohibiting abortion. Pro-abortion groups take the threat seriously; Planned Parenthood and the National Abortion Rights Action League have both launched nationwide campaigns warning of dire consequences if the human life statute is passed. "IN 1982, IF YOU HAVE A MISCARRIAGE YOU COULD BE PROSECUTED FOR MURDER" proclaimed a full-page Planned Parenthood ad this spring in the *New York Times*. Over this caption was a photograph of a perplexed and sad woman (who looks very much like Helen Gurley Brown) in a dress and in pearls and in jail.

3. The reasons why not

HOWEVER, STATES' FREEDOM to restrict or to criminalize abortions would be short-lived under the human life statute because that law would never stand up in court. *Roe* may be a very bad decision, even an unconstitutional one, but Galebach's proposal is not the way to undo it. The legislative history of Section 5, the precedents in the literacy requirements cases, and the opinions of legal scholars all underscore the undoubted unconstitutionality of the human life statute.

First, anti-abortionists have by their conduct clearly demonstrated their belief that a constitutional amendment, if not the only way to reverse *Roe*, is clearly the normal and historically approved way of doing so. They have seized upon Galebach's proposal only because they have failed, for eight frustrating years, to muster the votes needed for an amendment. Representative Henry J. Hyde (R.-Ill.) is not at all coy about it; he is pushing the human life statute because he doesn't think anti-abortionists "have the two-thirds majorities in the House and the Senate to pass" such a constitutional amendment. The Galebach proposal may be a stratagem for keeping the abortion issue in the public eye while lobbyists try to collect enough votes for a constitutional amendment, and it may be a novel legal theory, but there is no doubt that its advocates must bear a heavy burden of proof to convince the courts and the public of its constitutionality.

And most commentators are unconvinced that the burden can be borne. Senator Orrin Hatch (R.-Utah), a staunch anti-abortionist and chairman of the Senate Subcommittee on the Constitution, has often and publicly voiced his doubts about the bill's constitutionality. In a letter to the Senate Judiciary Committee last spring, a dozen conservative and liberal law professors denounced the proposed bill as "a dangerous circumvention of the avenues that the Constitution itself provides for reversing Supreme Court interpretations of the Constitution." Six former Attorneys General sent a letter of similar import to Senator Max Baucus (D.-Mont.). Wilfred Caron, general counsel to the United States Catholic Conference, which supports a constitutional amendment banning abortions, has denounced the human life statute as patently unconstitutional. Laurence Tribe and John Hart Ely, fierce competitors in their theories of judicial review and in their assessments of the propriety of *Roe v. Wade*, jointly wrote in the *New York Times* that they "have no trouble at all agreeing that this formula for overturning [*Roe v. Wade*] is badly misguided." There are, of course, legal scholars who disagree, but this remarkable consensus in the ordinarily factious legal community should give one pause.

Close scrutiny of Galebach's proposal reveals the reasons for this unwonted agreement. First, despite Galebach's creative analogy between the literacy requirement cases and *Roe v. Wade*, the two are not at all comparable. In *Morgan* the Court acquiesced in a Congressional *enlargement* of Fourteenth Amendment guarantees beyond what the Court had required in *Lassiter*; to dilute or to reduce judicially approved rights is an entirely different matter. Despite Galebach's rather specious contention that the human life statute merely expands Fourteenth Amendment protections to include the fetus, there is no gainsaying that the right of a woman to have an abortion, granted by the Court in *Roe*, will be reduced if not eliminated if the human life statute is passed. The notion that Congress may use its Section 5 powers only to expand court-granted rights—known as the "ratchet theory" in legal circles—was pointedly approved by Justice Brennan in *Morgan*: "Section 5 does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' . . . Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees."

GALEBACH'S EQUATION OF the voting rights cases with the abortion issue is faulty in another important way. Justice Brennan in *Morgan* stressed that the fact-finding capabilities of Congress are often superior to those of the judiciary. The judiciary is able to determine that in theory literacy tests are neutral in terms of race or ethnic origin, but Congress is in a better position to determine that, in the real world of blacks in the South or Puerto Ricans in New York City, literacy requirements for the exercise of the franchise do in fact operate to perpetuate or facilitate racial discrimination. *Morgan* can thus be read as granting Congress extensive powers under Section 5 only on issues which call into play that branch's fact-finding capacities. Abortion is not such an issue: the

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question of the humanity of the fetus, although it may involve facts of biology, also involves moral and philosophical issues which the trotting out of those facts does not resolve.

Senator John East (R.-N.C.), an anti-abortionist, and chairman of the Senate Subcommittee on the Separation of Powers, held hearings on the question of the humanity of the fetus last April; those hearings highlighted the non-factual nature of that question. Of the eight medical doctors who testified, seven concluded that — as the human life statute contends — human life begins at conception. Typical was the testimony of Dr. Jerome Le Jeune, professor of fundamental genetics at the Université de René Descartes in Paris: "The question of when human life begins is an established fact. All life, including human life, begins at conception." True but unhelpful, as the psychiatrists say. Dr. Leon E. Rosenberg, chairman of the department of genetics at the Yale University School of Medicine and the sole witness to disagree with this kind of oracular testimony, castigated Dr. Le Jeune and the other witnesses for their failure "to distinguish between their personal biases and their professional scientific judgments." Science, said Dr. Rosenberg, has no ready answer for this daunting issue: "Some people argue that life begins at conception, but others say that life begins when brain function appears or when the heart beats, or when a recognizable human form exists in miniature, or when a fetus can survive outside the uterus, or when natural birth occurs. There is no simple answer." Scientific knowledge about the biology of human reproduction is inherently insufficient to resolve the question of the humanity of the fetus because that question requires a definition of life itself. It is at root philosophical and moral.

The National Academy of Sciences agreed with Dr. Rosenberg; in a resolution passed a few days after Senator East's hearings, the Academy dismissed the possibility of a scientific resolution of this issue. When an issue does not involve fact-finding in the empirical sense that the voters rights case involved, then we are no longer dealing with the peculiar institutional competence from which Congressional authority under Section 5 is derived, and courts no longer have any reason to defer to an Orwellian legislative "determination."

Archibald Cox, who was an enthusiastic defender of congressional authority under Section 5 during those years when a liberal Congress was passing the progressive voting rights legislation which gave rise to the literacy test cases, nonetheless believes that such power is confined to areas which "quite genuinely involve investigation and evaluation of facts." Cox rejects the ratchet theory as nonsensical: "If relative competence is a justification for deferring to congressional extension of voting rights on the basis of factual findings and characterizations, as suggested in *Katzenbach v. Morgan*, relative competence also argues for deference when the direction of change is reversed."

This is a very generous view of congressional authority under Section 5. Suppose, for example, Congress concluded from an exhaustive and bona fide survey of the criminal justice system that the recitation of *Miranda* rights to suspects affects neither their behavior nor their knowledge of their rights, and thus is a dispensable burden on law enforcement. If Cox considered this issue to be a genuinely factual one, he would presumably permit Congress to overturn *Miranda*, with the unsettling result that the American system of judicial supremacy would be thrown into disarray. But *even* under Cox's broad construction of Section 5, the non-factual nature of the human life statute puts it beyond the purview of that Section. As Cox warns, "When the application of the equal protection or due process clause turns on a universal and relatively absolute rule of law not requiring evaluation of the surrounding circumstances or resolution of question of degree, there would seem to be no room for congressional dilution [of rights] because the dilution would not rest upon the kind of finding of fact or judgment of degree to which the deference accorded in *Katzenbach v. Morgan* is due."

THE GALEBACH PROPOSAL thus fails whether one accepts the ratchet theory of Section 5, its limitation to genuinely factual matters, or both. It also fails for specific historical reasons: the legislative history of Section 5, thoroughly reviewed by Yale University law professor Robert Burt, yields only the slimmest evidence that the Thirty-Ninth Congress, which passed the Fourteenth Amendment in 1866, had any intention to usurp the already-venerable *Marbury v. Madison* doctrine of judicial supremacy. Though the evidence is fragmentary, a fair reading of the record reveals that those nineteenth-century legislators, bent primarily on extirpating state-sponsored racial discrimination in the South, envisioned Section 5 solely as an enlargement of congressional power against those states and not as a diminution of judicial authority. Moreover, an earlier draft of the Amendment was rejected by Congress because, in Burt's words, "it failed to entrench the stated guarantees against a future unsympathic majority in Congress." Burt persuasively concludes, "If the central role in protecting the Amendment from future depredations is necessarily vested in the courts, and if that role was derived from the explicitly stated mistrust of future Congresses, where then does one find that the essence of the amendment was to enlarge the powers of Congress vis-à-vis the courts?"

Perhaps the most damning evidence against the human life statute is the sparseness of discussion of Section 5 in the legislative record. The lack of congressional attention to that Section argues forcefully that Congress meant it only as an interstitial and remedial provision and not as a radical transfer of the power of constitutional interpretation from the courts to Congress. Moreover, the plain language of Section 5 itself belies the validity of the proposed statute; regardless of the dictionary one uses, the authority "to enforce, by appropriate legislation" the provisions of the Fourteenth Amendment is not a power to draw the broad contours of that Amendment's guarantees. The enforcement power is an executory, not an interpretive, one.

But despite its almost certain demise in the courts, the human life statute has a fair-to-good chance of passage in Congress. There was a *gain* of forty anti-abortion senators and representatives in the November 1980 elections. In addition,

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vigorous lobbying and mail campaigns by right-to-life groups may push fence-sitting congressmen onto the anti-abortionists' turf. President Reagan has given a vague imprimatur to the proposed statute, and Richard Schweiker, Secretary of the Dept. of Health and Human Services, spoke for the administration when he promised support for "the new concept of defining through legislation when life begins." On the other hand, anti-abortionists are worried by the cool attitude toward the statute taken by Senator Hatch, who's strategically placed to obstruct the bill's progress, and also by the crack in the administration's attitude suggested by the nomination of Sandra Day O'Connor to the Court.

Proponents of the human life statute, in any case, have armies of lawyers who no doubt have advised them of the almost certain unconstitutionality of the bill; the anti-abortionists have chosen to press for the statute anyway, probably because they value it more for its political usefulness than for its constitutional correctness. The dispute over Galebach's proposal will keep abortion as a primary topic on the nation's agenda and, if it becomes law, the inevitable judicial invalidation of the bill will bolster anti-abortion sentiment and increase the prospects for passage of a constitutional amendment, of which there are eighteen currently pending in Congress.

4. Authority in a democracy

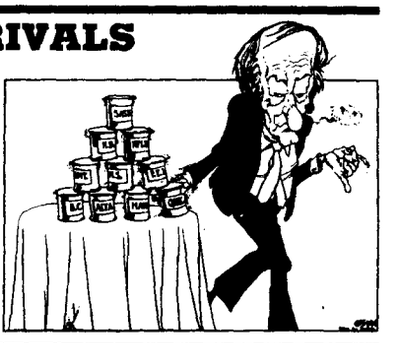
RATCHET THEORIES, *Marbury v. Madison*, the proper scope of judicial review: such are the associations lawyers make when the topic is abortion. They are associations few laypeople will recognize and fewer still will consider as urgent or important as those momentous issues, the meaning of human life and the putative right of a woman to control her destiny, which surround the public discussion of abortion. As John Hart Ely has remarked, "To the public the *Roe* decision must look very much like the New York Legislature's recent [1973] liberalization of its abortion law. Even in the unlikely event that someone should catch the public's ear long enough to charge that the wrong institution did the repealing, they have heard this 'legalism' before without taking to the streets."

And so it falls to the lawyers, out of inclination, noblesse oblige, or a serendipitous division of social labor, to mull over the arid and recondite constitutional implications of strategies chosen solely for their effectiveness in achieving a political end. For many public issues, certainly including the volatile issue of abortion, the legal community frets over means not ends, methods not results, process not substance. And so, for example, you will find many lawyers, like Ely, who are decidedly in favor of legalized abortion, but adamantly opposed to the *judicial* legalization of it in *Roe v. Wade*. Similarly, scores of lawyers resolutely opposed to *Roe* and, as citizens, and voters, resolutely opposed to legislative legalization of abortion, will voice their unstinting opposition to the proposal of Stephen Galebach.

The consensus of the legal community is that the Galebach proposal is a cute but clearly unconstitutional stratagem, dismissable almost out of hand. But the problems of *Roe v. Wade*, the perennial question of the authority of an unelected judiciary in a democratic society, is as befuddling for the legal profession, if not as heartrending, as is the question of the morality of abortion for the public at large. The limits of judicial power, a constitutional conundrum if ever there was one, will fatten the law journals long after the abortion controversy, by whatever resolution, travels from the headlines to the back pages and out of the newspapers altogether.

WHERE THE SAME VOTERS ELECT BITTER RIVALS

Quebec's political future



STEVEN PHILIP KRAMER

IF THERE is a crisis in Quebec today, it is political, not social or cultural.

To borrow an expression from Trotsky, Quebec has telescoped several stages of development in one generation. People recall how their farmhouses received electricity one day in the early 1950s, and television the next. Those thirty years old received their education in confessional schools; there were no non-denominational schools until the 1960s. Nothing is more obvious than the difference between the Quebec of 1959 and that of 1981. This is so much the case that it is easy to ignore the continuities. Yet, in their own way, all of Quebec's leaders have attempted to maintain Quebec's separate identity as a French-speaking nation on an English-speaking continent.

Even the symbol of the old days, Maurice Duplessis, who dominated the province from the 1940s until his death in 1959, asserted Quebec's rights against the claims of the federal government. The old clerical elite, which imposed a dour Catholicism on the population (the subject of many a contem-

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porary novel) preserved Quebec's separateness, albeit at the expense of her economic and social development. So at least in this respect, René Levesque represents the continuity of Quebec politics, rather than an aberration.

The Quiet Revolution of the 1960s was a cultural breakthrough which occurred very rapidly because the economic infrastructure of a modern society had already been laid and because the pillars of the old order had already begun to collapse. The process began under the Liberal government of Jean Lesage in 1960; liberalism, with its emphasis on individual rights, served as a solvent for the structures of the old regime. That same liberal vision was shared on a national level by Pierre-Elliott Trudeau, who worked for a bilingual Canada and a strong central government. But Quebeckers hesitated before this model, the more so because their once high population growth had radically declined, and they constituted only a small minority of the entire population. One reply to Trudeau was the creation of the Parti Québecois, which defended the concept of independence. The growth of the P.Q. was the result of two almost contradictory yet related sentiments: the old conservative fear of being engulfed in an English-speaking (and modern) civilization, and a new feeling that Quebec was a modern nation and had the capacity to be its own master.

Contrary to expectations, the Parti Québecois won the provincial elections of 1976. In 1980, it sponsored a referendum designed to grant the provincial government a mandate to negotiate "sovereignty-association" (political independence and economic cooperation) with Ottawa, but only 40 percent of the voters were in favor. Nevertheless, the electorate returned the P.Q. with an enormous majority in this year's provincial elections. The Quebec population is obviously ambivalent. What does this bode for the future of Quebec-Canadian relations? The question may best be approached by examining some of the contradictions which confuse the political situation.

Why does the electorate return the Parti Québecois, yet refuse to endorse its guiding principle, independence? One reason may have nothing to do with ideology. Many people think that the Levesque government is capable and honest. Another reason is that many of those who desire a "renewed federalism" have more confidence in the P.Q.'s ability to negotiate such a solution than in that of the Liberal Party, although "renewed federalism" is the slogan of the Liberals! Indeed, the last provincial election was a disaster for the Liberals, most of whose support came this time from the English-speaking minority and old people. Unless it finds a new sense of purpose, it could follow the Union Nationale to the dustbin of history.

Nevertheless, the Parti Québecois experiences the quandary of being dedicated to radical change and at the same time being a party of government unable to bring about such change. René Levesque has promised not to hold another referendum during this term of office. There must inevitably be tensions between the ideologues and the pragmatists within the P.Q. The very success of Quebec's assertion of its special identity tends to undercut the argument that without independence Quebec cannot survive as a cultural identity, since the arguments for independence are more cultural than economic (it is said that Quebec can survive independence economically), more affective than concrete. It is widely held that the younger generation is far less politicized than the generation of thirty-forty-year-olds. This makes it possible that unless independence comes soon, it will never come.

The divergences between ideologues and pragmatists could ultimately threaten the unity of the party. One solution that has been frequently mentioned recently is holding the next provincial elections as referendal elections, i.e. the Parti Québecois would run on the platform of sovereignty-association, and would consider an electoral victory as a mandate for initiating such negotiations. This would provide one way out of the impasse, but it might do so by plunging the party back into opposition. Moreover, even if the Parti Québecois won the election, Ottawa could refuse to negotiate on the grounds that the party had evaded its former pledge not to negotiate unless it had won a referendum.

After five years of government, the Parti Québecois suffers the usual fate of parties of opposition which become parties of government. Just as European Christian-Democratic parties group different and sometimes conflicting classes and interest groups under the banner of religion, the P.Q. does likewise under the banner of independence. Once in power, it can't please everyone. Thus, there is some talk among the left about the creation of a social-democratic party, but it is hard to tell how serious the talk is.

THE SECOND great irony of Quebec politics is that the same voters who elect the Parti Québecois against the provincial Liberal party also vote nearly to a man for the Liberal party on the federal level. In English Canada, there are two major parties, the Liberals and Conservatives, and a strong third party, the New Democrats, a labor party. In Quebec, however, the last two are mere phantoms (on August 17, in a by-election, Roch LaSalle was reelected as the sole Conservative from the province, and not because he was a Conservative). The Quebeckers have never forgiven the English-dominated Conservative party for having foisted conscription on them in 1917. Thus the same voters elect two bitter rivals, Trudeau and Levesque.

If, as many Parti Québecois members really believe, Trudeau is their real enemy, why doesn't the Parti Québecois run its own candidates for federal parliament? This would bring the Conservatives to power, which would seem to make sense, since these same people claim that they would rather deal with Joe Clark than with Trudeau.

The most obvious reply is that it would be illogical for a party dedicated to Quebec independence to hold seats in a federal parliament. But such logic has not prevented other nationalist parties from doing so elsewhere (e.g. Scottish nationalists in the English parliament). Perhaps more significant is the belief that they would lose. A third unstated reason is perhaps the fear that if they succeeded, they would destroy the Liberal party, whose strength is now based almost exclu-

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sively in Quebec and Ontario, and thereby reduce French influence in Ottawa. Quebeckers have always attempted to accomplish their goals through both the provincial and federal governments. They have previously hesitated to put all their eggs in one basket; there is no evidence that they are now ready to do otherwise. This makes any solution of the Liberal-Parti Québecois struggle unlikely.

It is hard to imagine any worthwhile negotiations taking place between Trudeau and Levesque. Indeed, the former's efforts to "repatriate" the Constitution (the British North America Act of 1867 remains the Canadian constitution and its repatriation requires the assent of the British parliament) on his own terms has united eight of the ten provinces in opposition. They are busy bringing suits before the Canadian Supreme Court and in buttonholing the backbenchers in Westminister. Trudeau's plan was perhaps prompted by his promise during the referendum campaign to offer the basis of a new federalism. Unfortunately, the repatriation issue is tangential to the real problem, and has merely injected a host of legal technicalities and a great deal of bad feeling into Canadian politics. This, together with Trudeau's rather cavalier decision to take a safari in Africa while the Canadian dollar plummeted, has undermined his popularity, a decline reflected in a Toronto by-election of August 17, where one of his closest protégés, Jim Coutts, was defeated in what was allegedly the safest riding in Ontario.

Perhaps only the departure of Trudeau will permit serious discussion about a new federalism. Federalism, to be sure, is not a romantic ideal in Canada; it could be an acceptable marriage of convenience, if Quebec could get cultural autonomy and the west some satisfaction over control of energy deposits. But unless such discussion does take place, the desire for independence in Quebec will rise, and no one should question the ability of Quebeckers to succeed in running their own state.

Dance

DUTCH TREAT

PLUS NUREYEV'S LA SCALA

SINCE ITS INCEPTION in 1959 as an insurgent group rebelling against the then reigning Dutch National Ballet, the Netherlands Dance Theater has functioned as a forcing house for choreographers interested in creating a middle road between modern dance and classic ballet. The names include John Butler, Glen Tetley, Jap Flier, Hans van Manen, Rudi van Dantzig, and most recently Jiri Kylian, the company's artistic director.

In a way, Kylian is the most interesting of the group, having emerged from the classic ballet tradition of an Iron Curtain country, Czechoslovakia. While at the Prague Conservatory he was well grounded in music in addition to dance study which included mime and basic Graham technique as well as ballet.

Unlike classical choreographers, Kylian is not so much interested in steps, per se, as he is in flowing surges of movement that strive for seamlessness rather than photographic images. It is, in fact, difficult to think of Kylian's ballets in terms of moments. They are more like spurts of energy that whip out over the stage space in jets of activity. The scenic investiture of his works most frequently features a backdrop indicating a limitless surrealistic plain not indicative of any specific time or place.

"Sinfonietta," to Janacek's score of the same name, is prototypical in its use of such space and dance energy. There are very few actual steps in the ballet but those that are used are presented in a wide dynamic range. Lifts by the men appear to push the women upward through an invisible barrier that they are trying to break, or else present the women in great arcs swinging outward as if to be launched in a scythelike assault on another dimension. One is aware of space as an element of the dance in a way that owes much to modern dance. It exists as the atmosphere in which the dancers have their being as water would be to aquatic creatures.

The "Symphony of Psalms," to Stravinsky's powerful score, is danced against a hanging background of oriental rugs, and the piece itself suggests a certain loom-like shuttling of dancers as they cross and recross the stage in long, vertical files. At each crossing, individuals drop out of the line to remain stationary at various spots on the stage. The solos and the duets that are sprinkled throughout the work are like the various design figures one would encounter in the overall patterning of a luxurious carpet. The resolution of the piece finds all of the dancers proceeding slowly at a walk back toward the rear of the stage as the light dims. They have had their moment; the pattern of their lives has been recorded; the dance is done. The variety of the carpets in the decor suggests that an infinite number of patterns could be woven from similar discrete threads.

The newer dances were less successful. "Soldier's Mass," commemorating the loss of a Czech detachment during the Second World War, featured a dozen men in grey work shirts and trousers who were banded together by a single tragedy. As in others of Kylian's works, the dancers often faced away from the audience, crouched, and ran sweepingly across the stage but to little effect. Most of the solemnity of the event derived from brute historic fact rather than from the inventiveness of the choreographic patterns. It was a homage with little artistic focus. A similar artistic thinness afflicted "Overgrown Path," which was based on a series of piano pieces written by Janaćek after the death of his daughter. For the most part they were too slight to support visual transcription because of their highly similar variations on a single theme.

Amidst the high seriousness of the season, "Symphony in D" stood out as that rarity in dance, a truly humorous ballet based on balletic convention and technique rather than a series of inane anecdotal situations. Men found themselves sur-

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rounded by a hoard of predatory corps de ballet females and struggled bravely to make the most of an obvious mismatch in choreographic numbers.

Men ordinarily partner women so, of course, Kylian had the reverse take place, at times with great effect. The trio, so long an established ballet triangle, was pushed to its logical and humorous extreme by having the covert competiton for the man's attention emerge into open rivalry. The line between humor and seriousness is a fine one in a highly stylized art form, as caricature so clearly shows, and Kylian cast a wickedly funny eye on his chosen métier.

Unfortunately, a certain number of Kylian mannerisms began to get repetitious in a way that would not occur in a more balanced repertory.

He is a talented choreographer, though one wonders whether talented enough to sustain an entire season with his ballets alone.

RUDOLF NUREYEV'S continuing ability to attract audiences by sheer stage presence accounts in large part for the appearance of La Scala's ballet Company at the Metropolitan Opera House this summer. Without such a guarantee, it is doubtful whether any management would have risked producing such a large-scaled troupe with a modest reputation.

Nureyev's presence was felt both as performer and choreographer. The quality of his performance is clearly less on a purely technical basis than it once was. His dancing now possesses an obvious athletic quality that used to be hidden in his characterizations. Sustained poses such as the attitude have replaced, in large measure, air work; and rapid beats of the legs provide the excitement ordinarily provided by varieties of jumps. These steps, presented with intense ardor, still generate a genuine audience response.

As the choreographer of the company's major presentation during the season, "Romeo and Juliet," Nureyev styled the work for his present skills. The ballet follows the text of the Shakespeare play quite closely down to the somewhat sudden reconciliation of the Montagues and the Capulets in the tomb of the two lovers. Most others close with the death scene.

As conceived by Nureyev, Verona is a city of raw vitality and elegance whose energies are directed toward the fatal intersection of dalliance and death. Visually the production is stunning. The intimacies of rooms and public spaces are backed by grand vistas of the city and its monuments. Black sculptured objects like huge armoires are shuttled in and out to frame the various scenes. At times they compress the space by their bulk and at other moments serve as mammoth outside bulwarks of various buildings.

Of the three Juliets, Carla Fracci's was the most successful in its combination of childlike innocence and awakening knowledge of tragedy. At all performances of the ballet Margot Fonteyn appeared as Juliet's mother and showed a most eloquent carriage of the arms and head with expressive facial expression. It was quite clear that any lack of bloodthirstiness on her husband's part would be more than made up for by the matriarch of the Capulet household.

Tiziano Mietto's brooding height perfectly suited the surly and easily offended Tybalt, and Bruno Vescovo's light quickness made his Mercutio notable. Again and again though, one was drawn to appreciate the splendor of the settings more than the inventiveness of the choreography. The design looked inevitably correct in both scale and detail.

The remaining peformances were given over to "Giselle" and a few scattered mixed bills of shorter ballets. The "Giselle" was modeled after the American Ballet Theater version designed by the late David Blair. It was a production that Miss Fracci had earlier won considerable acclaim for, and she continued to demonstrate why she has a special claim to the role. With Nureyev she showed a beautiful sense of dramatic proportion, moving from the light-heartedness of infatuation to the nobility of enduring and faithful love. Hers is the life that is sacrificed but she makes it quite clear that the tragedy is the betrayer's, not the betrayed's.

The evenings of shorter ballets were very mixed in quality. The company obviously has a flair for dramatic ballets but included too few good ones in the schedule. The corps is well schooled if somewhat timid but the season was dominated by guests who gave their best but would all too soon depart.

DON McDONAGH

Screen

AMERICAN TRAGEDY

MUDDLE-AGED LIBERALISM

THERE are a couple of high schools in Harlem where delinquency is so rampant and ineradicable that the City of New York is thinking of closing them down completely for a few years. Only after the current student body had all passed through and graduated, leaving these schools entirely vacant, would they be started up again. Only by such a drastic measure, it is now believed, could the cycle of corruption at the schools possibly be broken. The plan contains a kind of despair about our institutions, a feeling that they are, finally, beyond reform — that they are hopeless. Sidney Lumet's new movie, *Prince of the City*, seems to have been made under a similar cloud. In a twenty-year series of films from *Twelve Angry Men* through *Serpico* and *Dog-Day Afternoon*, Lumet was always the classic New York liberal. But in *Prince of the City*, there is a kind of failure of liberal nerve that is at once both depressing and poignant.

The film is based on the true story of a police detective who became the star witness for the Knapp Commission, which investigated police corruption in New York about a decade ago. There are scores of speaking parts in this film whose story takes Lumet upwards of three hours to tell. The reason for the length lies not only in the complexity of the case, but in Lumet's readiness to let the story lead him wherever it will.

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Despite the reference the film's title makes to the detective, who is here called Danny and played by Treat Williams, the story leads increasingly beyond him and indeed beyond any single individual.

Danny is a member of the Special Investigations Unit, the "princes of the city," as the detectives in the unit were called both because of their legendary success making drug busts and the impunity with which they themselves operated. On the one hand, "prince" is a term appropriate to the adaptation of Robert Daley's book done by Lumet and Jay Presson Allen, for all concerned think of the story as a tragedy. Danny is motivated by a kind of hubris, a desire to expose himself to danger coupled with a foolish belief that he could protect himself and his partners at S.I.U. from implication. On the other hand, Danny's tragedy, if that's what it is, is not being singled out by fate, but swallowed up by it. Danny eventually merges into the mass of resignations, break-downs, suicides, and near-suicides that he causes among the ranks at S.I.U. He is caught, along with all the rest, in the inexorable contradictions of the institutions he seeks to reform. The tragedy is not ultimately his alone, but the system's.

This is why Lumet's story becomes so long and involves ever greater numbers of characters. Danny's story is lost in the shuffle of innumerable other ruined careers, of conflicts of interest and of values. In the end, Lumet feels compelled to give everyone his day in court; yet no one is finally found either innocent or guilty. The truth is that the cops could not catch anybody, let alone make the mass assaults on narcotics traffic S.I.U. achieves, unless cops ingratiated themselves with junkies, pushers, gangsters — the very people they are trying to eliminate. In the process, there is inevitably a trade-off. Many criminals are caught, and many cops corrupted. The truth is also that the Justice Department — the idealistic young prosecutors and puritanical, upper-middle-class graduates of Harvard Law — has beguiled and exploited Danny as surely as he did the junkies whom he used as informers by supplying them with heroin. Yet even the most hard-nosed and merciless of these lawyers, the one who wants to turn around and prosecute Danny once he's no longer useful, is also seen to have his decent reasons, his code, his own, terrible nobility.

There is no solution, no way out of the dilemma. The checks and balances become a stand-off, a paralysis whereby everyone is individually in the right and all have, collectively, gone wrong. The more Lumet probes his characters, the more human each of them becomes, and the more untenable classic liberalism becomes as well. Little by little, the spirit of reform, optimism, becomes impossible. Even the most energetic of liberals, the most committed true believer, has to throw up his hands and says, as one of the characters in Dickens's *Hard Times* repeatedly does, "Aw's a muddle." That might have been a better title, or at least a less ironic one, for *Prince of the City*.

COLIN L. WESTERBECK, JR.

Books: A NEW POLITICAL THEOLOGY?

THEOLOGY AND POLITICAL SOCIETY
Charles Davis
Cambridge Univ. Press, $19.95, 196 pp.
CATHOLICS AND CANADIAN SOCIALISM
Gregory Baum
Paulist Press, $9.95, 240 pp.

John A. Coleman,

I PICKED UP Charles Davis's *Theology and Political Society* with great expectations. He promised to deliver in this recent book a new, fresh approach to political theology, something distinct from either German political theology (especially that associated with J.B. Metz) or Latin American Liberation Theology. From this English-born Canadian I had hoped for a critical social theology appropriate to Anglo-Saxon and North American societal and political realities. Alas, Davis's book disappointed my hopes. There is hardly a clue in it to Davis's own social, cultural, and political location in Canada. His book could have been written almost anywhere in the industrialized West, but most likely by a philosopher in Germany.

Davis functions best as a critic. He scores J.B. Metz for "substituting conceptual analysis for concrete history and attempting to explain the modern world simply in terms of thought." He asserts the need to understand any religious tradition in reference to the social location of the group which carries it. Davis's criticism of Liberation Theology centers on its lack of a coherent political theory. It is still too directly biblical and theological. Its unmediated move from biblical symbols to politics leads to interventions which remain "politically incoherent, voluntarist, and baldly opportunist." The papal social teaching, on its part, is dismissed as "hortatory generalities upon social matters" which circulate only among church members.

Judging from such critical disclaimers one would expect the author to provide a new kind of political theology. Despite trenchant criticisms of Metz — for example, "Christian talk on politics has become unreal, stripped of both theory and programme, because it is the free ranging speech of the disengaged" — Davis himself provides neither social theory nor a program. Like Metz he relies on the thought of the neo-Marxist Frankfurt School. Perhaps pots should be wary of calling kettles black!

Not that Davis's book isn't interesting, full of many wise, even profound remarks about politics, religion, and society. But these individual insights do not really add up to a coherence. In effect the book is a philosophico-theological disquisition. It remains a *prolegomenon* to a political theology, concerned with methodological issues and formal properties and neglecting substantive discussions of specific forms of polity, economics, or culture. Even as political

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philosophy, Davis's book is very abstract and general.

Davis's thesis is that an adequate political theology must incorporate a general theory of society and history. But he provides none. Secondly, he argues that political theology must render an adequate account of the conditions which make for freedom and oppression (to which I want to respond, "Whew! That is a large order.") Davis's preferred theory for this latter is Jurgen Habermas's notion of a society of non-distorted communication. The goal of politics, in this view, would be — pardon the jargon! — "a universal identity in an emancipatory process." There is no attempt by Davis to discuss how this highly abstract, neo-Kantian ideal gets translated into institutional realities. Strangely enough — in a book on political theology — there is really no attention anywhere to institutions.

Davis is generally good if unoriginal in his treatment of the authority of tradition, religion, the critique of domination, and his discussion of the respective languages of religion and politics. I missed, however, any truly insightful discussion of the political function of religious language as a double entendre — for example, the kingdom of God as the real power, glory, culmination of history. As the British sociologist of religion David Martin contends in *The Dilemmas of Contemporary Religion*, the kingdom language — in a comic/tragic dialectic — *reflects* the principalities and powers even as it subverts them. This is the social tragedy of any religion as it faces what the late Thomas O'Dea called the *dilemma* of institutionalization. But Charles Davis has little sympathy for institutional religion. As a result, his talk about religion and politics is always bound to remain airy.

What a delight, on the other hand, to turn to Gregory Baum's *Catholics and Canadian Socialism*. Throughout, Baum's social location in Canadian realities is clear. He originally published the book with a Canadian publishing house distinguished for its volumes on Canadian socialism (James Lorimer and Company, Toronto). Baum is a member of the socialist New Democratic Party whose origins in the 1920s through the 1940s as the Cooperative Commonwealth Federation (CCF) he studies. Despite the fact that Canadian socialism was (and is) democratic, civil libertarian, populist, and moral, Canadian Catholics, for the most part, steered away from the CCF. Their bishops condemned it.

Baum traces the Catholics' animus against the socialist movement of the thirties (which in so many respects was similar to the ideals of social Catholicism) to the papal condemnation of socialism in *Quadragesimo Anno*. His chapter on Catholic social teaching is critical, balanced, rich in historical perspective. His summary judgment is worth citing: "The difficulty of Catholic social teaching was that it did not correspond to any actual historical movement . . . Catholic social teaching . . . was idealistic in the pejorative Marxist sense, inasmuch as it was a pure creation of the mind, outlining what ought to happen according to an abstract idea of justice, and not a social theory based on the actual historical experience of people struggling for emancipation."

The Quebec bishops decided in 1934 — despite its unobjectionable character — that no Catholic could join CCF. It would not be until 1943 that this gross political injustice, based on an unfair reading of the CCF, was rescinded. Perhaps the most interesting part of the book is Baum's study of Catholic nonconformists, those who stayed with the CCF despite episcopal disapproval. He also devotes a chapter to the social thought of the Antigonish cooperative movement which was influential on U.S. Catholic movements of the thirties and forties.

I recommend Baum's lively history as a model of the kind of history needed to discover an appropriately North American political theology. In its concreteness it delivers, beyond the specific history, a critical appropriation of the tradition of Catholic social thought. In the case of the United States, a fresh look at the social thought of the Catholic labor schools of the thirties and forties should prove similarly illuminating.

What is clear, as Baum suggests, is that a political theology will remain wholly abstract unless it backs (or at least tilts toward) an existing political movement or gives rise to some concrete political strategy. Does United States Catholicism have any real strategy or program for an American society based on the common good? Or do we simply tackle, *ad hoc*, disparate issues?

These are the kinds of questions Baum's excellent historical study raises. Struggling with them could generate the beginnings of a distinctively North American political theology.

How a good style works

FIRST REACTIONS

Clive James

Knopf, $12.95, 240 pp.

Howard Kaplan

AROUND fifteen years ago Clive James went into business as a highbrow lit critic on Grub Street. The trade's as profitable as a beggar's, but he's still at it; he's also a poet, which sounds suicidal. To keep himself in beer money he watches TV for *The Observer*, the London Sunday newspaper. For the last eight years this native Australian, resident in England since 1961, has turned out a thousand words per week on fluff like *Star Trek* and *The Rockford Files* (he admires James Garner's "miraculous social ease and the way the California air looks so warm"). Meanwhile the real work goes on: essays for *TLS*, *The Listener*, *Encounter*, *Commentary*, *The New York Review of Books*; several verse epics; an autobiographical volume entitled *Unreliable Memoirs*. His new book of thirty-two essays (heavy on the lit crit) is his first to appear on this side of the Atlantic.

James is less interested in ideas than he is in questions of style, and more interested in understanding how a good style works than in knocking a poor one.

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In the preface to *First Reactions* he says that he left out most of his mean pieces, that he can be quite bitchy when he wants. I wonder. In the course of being nasty about Lillian Hellman's *Pentimento* he also sneers at *An Unfinished Woman* ("The very first time Hammett's drinking was referred to as 'the drinking,' you knew your were in for a solid course of bastardized Hemingwayese"), but by the end you see him squirming: the article closes with a veiled apology to the effect that Hellman herself always wanted critics to tell it to her straight. Thank you, Clive.

James needn't make excuses for being an enthusiast (he isn't in his TV reviews, but more on these in a minute). The essays are so packed with insights — loving insights, with just the right amount of severity — that any one of them could serve as an intro to the collected works of whichever author James is discussing: Edmund Wilson, Raymond Chandler, Lawrence, Auden, Cummings. Even his slender review of Shaw's correspondence achieves the utmost in suggestiveness — a three-minute egg of an article that captures the man as neatly as his three-letter signature. There's no analysis of Shaw's style in it, though. For that kind of work James needs room to stretch, say five thousand words. Then he's like the bouncing ball in cartoons, taking us syllable by syllable down a line of poetry or prose. But he's not just a quoting machine. His descriptions of stylistic effects are themselves little show-stoppers, like this one from "The Metropolitan Critic": "The most difficult escape Houdini ever made was from a wet sheet, but since he was in the business of doing difficult-looking things he had to abandon this trick, because to the public it seemed easy. What Wilson was doing was never easy, but he had the good manners to make it look that way. If he could only have managed to dream up an objective correlative, or a few types of ambiguity . . . he would be more fashionable now than he is." The flashy analogy drawn from pop entertainment, the sarcasm toward highfalutin talk: James simultaneously exhibits his own style and pins down another. A wonderful killing of two birds.

> *Flaubert liked tinsel better than silver because tinsel possessed all silver's attributes plus one in addition — pathos. For whatever reason, Chandler was fascinated by the cheapness of L.A. When he said that it had as much personality as a paper cup, he was saying what he liked about it. When he said that he could leave it without a pang, he was saying why he felt at home there. In a city where the rich were as vulgar as the poor, all the streets were mean. In a democracy of trash, Marlowe was the only aristocrat.*
>
> — Clive James
> *First Reactions*

James has riled some people for being a cut-up, but a man in his position probably has to be. When you're not taking refuge in the groves of Academe you need a few tricks. (Another one of his is the fairly standard make-them-think-you've-read-everything, but maybe he has.) He never strains to make a point, though, and the judgments are sound. The final essay, for instance, rightly sums up Mailer's *Marilyn* as the expression of an elitist succumbing to plebeian tastes. While working toward that appraisal the essay crackles with so many provocative observations that one is tempted to call it the best in the book — until one remembers that the subject of Mailer seems to lend itself to provocative observations. The real prizewinners are the pieces on Auden, Cummings, and Philip Larkin, James's personal all-star poets. He believes they were born not made ("What other men occasionally achieve was all there as a gift," he writes of Auden, and of Larkin that he has gone on clarifying "what he was sent to say"); but he doesn't let the matter rest there. He senses where the walls are for each of his favorites; his specialty lies in relating how they equip themselves to scale them — or try to scale them. The pain and

Third World Witness

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—A. WHITNEY ELLSWORTH, Publisher, The N.Y. Review of Books
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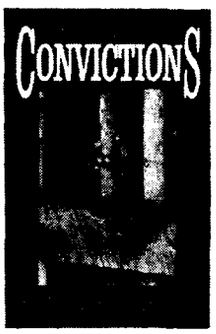

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By Martin Lange and Reinhold Iblacker.
Foreword by Karl Rahner
"A collection of documentation on suffering and struggle, on subversion and resistance, on the martyrdom of numberless, often nameless, 'nobodies'. It is a revelation of happenings unknown to us, a reader for schools and for religious instruction, a workbook for basic Christian communities."—DOROTHEE SOLLE, Union Theological Seminary
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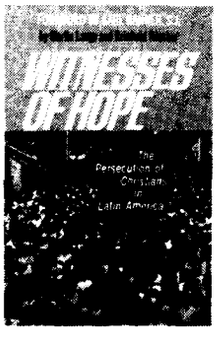

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self-discipline involved make these pieces read like hagiographies.

Sandwiched between the literary articles are fifteen TV reviews. James admits to showing off deliriously here. The assumption is that any attempt at formal critical discourse would fall on its face. How does one talk intelligently and seriously about something as mindless as TV often is? James's solution is to act like a lowbrow's conception of the critic as Big Snob. He spends a lot of time catching sportscasters in verbal slip-ups, and you can practically see him lying in wait with all the glee of an English prof with nothing better to do. That's the point, of course: there is nothing better to do. More often than not the wisecracks are duds — sure sign of a man killing time. It's when he's up against shows sanctioned by the culture vultures that he performs best. If you liked Bergman's *Scenes from a Marriage* or Frederic Raphael's *Glittering Prizes*, James may change your mind. He's got the bookworm's bias against the tube, and the more literate shows can sometimes irk him more than the blatantly silly ones. Not that he can much stomach the pap. Still . . . TV critic for *The Observer*. It's not a bad sinecure, and if anyone deserves a wider audience it's James.

The tedium of happiness

FIRES

Marguerite Yourcenar

Translated by Dori Katz

Farrar, Straus & Giroux, $10.95, 89 pp.

Wallace Fowlie

LAST YEAR Marguerite Yourcenar was elected to the Académie Française. She was the first woman since its creation in the seventeenth century to be thus honored as one of the "forty immortals" of France. During the latter part of her life she became an American citizen and lives today on an island off the coast of Maine. At a moment when feminine literature in France is being carefully examined and assessed, she occupies an eminent place with Simone de Beauvoir, Simone Weil, and Colette, and, from an earlier age, with Mme de Staël and George Sand.

As a young girl she read the classics, encouraged by her father who brought her up and who was himself a free spirit and an intellectual. For the publication of her first book the father and daughter devised the anagram "Yourcenar" based on their name Crayencour. She had always been fascinated by the letter Y which she claimed resembles a tree. Yourcenar's career was fairly obscure until the publication in 1951 of *Les Mémoires d'Hadrien* (published in English in 1954 as *Memoirs of Hadrian*). This impeccably documented imaginary memoir of Emperor Hadrian brought her considerable fame. She had already written a study of Pindar (1932) and translated works of Henry James and Virginia Woolf, as well as the Greek poet Cavafy.

Midway between her first book, *Alexis* (1929), and *Les Mémoires d'Hadrien*, she published in 1936 a set of nine monologues to which she gave the title *Feux* and which today appears for the first time in English as *Fires*. Even in English these prose poems seem French in tone and style and genre. They have been admirably and sensitively translated by Dori Katz with the collaboration of Mme. Yourcenar. In a brief preface, written in 1975 expressly for this translation, the writer explains the genesis of *Fires* as being a love crisis and describes the mannerism of the writing as more ornate, more "precious" than the later style of *Hadrian*. The book is appropriately dedicated to Hermes, and we remember that Hermes was both the god of eloquence and the messenger of the gods.

Composed in 1935 when Yourcenar was thirty-two years old, each of the monologues (six are spoken by women and three by men) reveals the feelings of the speaker who is suffering from absolute love and the circumstances that surround that tragic experience. Each text is preceded by a few guiding aphorisms more bare and more direct than the monologue itself, *pensées* almost, although one thinks of La Rochefoucauld more than of Pascal.

All of the characters whom we hear speak their confession, with one exception, that of Mary Magdalene, come from ancient Greece. History and legend are the background, but the past of these legends is recast in modern versions. When these fires of love were being written by Yourcenar, the French stage, at approximately the same time, was being invaded by heroes and heroines of Greece speaking in modern French with a knowledge of modern history and especially with the knowledge of our modern wars: Giraudoux *(La Guerre de Troie n' aura pas lieu)*, Cocteau *(La Machine infernale)*, Sartre *(Les Mouches)*, Anouilh *(Antigone)*. In her own very original way, and for her own purposes, Yourcenar uses the masks of Phaedra and Achilles, of Antigone and Phaedo, and of the five others, and through them speaks to us of total love for one person and its fated tragedy.

To each of the nine names is added, on the title page, an abstract noun that presumably designates the lesson of that particular "fire." The mystical property of "nine" incites a reader to look upon these literary exercises, where classical and contemporary allusions vie with one another, as exorcisms performed for the alleviation of suffering as well as for the understanding of suffering.

For the one non-Greek figure, "Mary Magdalene or salvation," Yourcenar resurrects a tradition going back to *The Golden Legend* and apocryphal gospels in which Mary Magdalene was bethrothed to Saint John, who abandoned her to follow Christ. She appears therefore as the woman who knew nothing but adoration and debauchery. "Phaedra or despair." is the opening monologue and one of the most powerful in the collection. As might be imagined, Racine is more present in Yourcenar's *Phèdre* than Euripides. She is both passion and crime. In order to go to Hell, she takes "oars" as if she will be moving through those waters presided over by Charon. But the French word *rames* means "rails" as well as "oars," and Phaedra is also moving along the Métro's under-

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ground corridors.

Achilles and Patroclus are both in Homer but they are also in painters and sculptors and other poets of all the ages, and here too in Yourcenar's second and third monologues, "Achilles or the lie," is Achilles dressed as a girl, whereas "Patroclus or destiny" is the dead friend of Achilles for whom fate appeared in theatrical disguises. The book is made up of a series of rich scenes: Athenian gardens, acrobatic tight-rope dances, Peter's denial of Christ, Socrates enjoying the smile of Alcibiades, the adolescence of Aegisthus coinciding with the widowhood of Clytemnestra.

But always, as the center of all the scenes and in the heart of each protagonist, we read of the complexity and the passion of an emotion. Whatever the scene is, whatever words or allusions are said, the same confession repeats itself: to know happiness would be tedium and dullness; the beloved is the keystone of the universe; the lover wills to be burned with more fires.

A plenitude of genuine poetry

CELESTIAL PANTOMIME
POETIC STRUCTURES OF TRANSCENDENCE

Yale University Press, $22.50, 270 pp.

Justus George Lawler

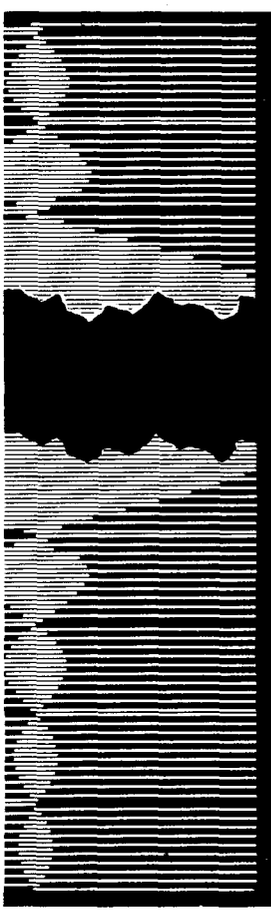
J. Hillis Miller

CELESTIAL PANTOMIME is a book on the way poetry may be seen as the formal expression of religious experience. It is one of the best books I know on this topic—for its abundance, its wide range, its learning, its persuasive intelligence and wit. Here is God's plenty, and literally so, since the plenitude of genuine poetry, for Lawler, finally belongs to God or obscurely expresses some intuition of "transcendence." This conviction is familiar enough. What is original, or even extraordinary, about Lawler's book is not just the admirable abundance of the examples but the detailed exploration of the proposition that it is more by its verbal grain that poetry communicates its religious content than by way of any "lexical statement." For Lawler "the ultimate purpose of poetry is the employment of patterned ideas, images, and sounds, to communicate something about the patterns . . . ," but what the patterns communicate is, in the phrase he borrows from Wallace Stevens, the "central poem" or, in another phrase Lawler uses repeatedly, the "heuristic myth."

Lawler's "heuristic myth" is the universal journey of descent and return—*ingressus*, *progressus*, and *regressus*, or, as he more compendiously expresses it in a passage early in the book:

> The myth is rudimentary, and . . . in fact should be as congenial to a Stevensian fictionist as to a Freudian reductionist, and as congenial to someone who believes man's "soul" participates a personal God as to someone who believes man is nothing more than a portable and compendious sack of acids and enzymes. Put most conventionally, the myth affirms that man has a sense of having come forth from unity, of dwelling halfway between unity and disunity, and of therefore wanting to return to unity, but to a unity which, precisely because it is attained by journeying through disunity, must somehow be a higher state than that originally remembered. . . . Whether or not one regards the myth as "true," there is no doubt that either in its religious form or in its secularised version it has been a major influence on almost all Western poetry.

The reader will see from this Lawler's bias and will see also what is mildly disingenuous about the initial claim that the myth is as much congenial to skeptics as to believers. This is so because, for Lawler, all people are innately "believers," as the universality of the "myth" attests. Someone may think he believes humans are sacks of acids and enzymes,



ABORTION AND MORAL THEORY

L.W. Sumner

"Examines the current social issue in a philosophical context. Conservative and liberal views are carefully stated before the book arrives at a moderate position." —*The Los Angeles Times*

At the heart of the current debate over abortion is the question of what is at stake: for the liberal/feminist group it is the woman's autonomy over her own body; for the conservative/"pro-life" group it is the life of the fetus itself. Rejecting both of these views as extremes, L.W. Sumner opts for a moderate position for which he provides a moral foundation. His aims are both practical and theoretical, and he brings up many pertinent questions.
Cloth, $16.50. Paper, $4.95.

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but the force over him of the myth indicates otherwise. So it is the whole purpose of Lawler's book to argue. His book is discreetly polemical, hortatory, a work of conversion, as any good book of this sort should be.

Recognition of the myth and allegiance to it is common enough. It appears, for example, as the central theme in Meyer Abrams's *Natural Supernaturalism*, as Lawler notes. Lawler's sensitivity to nuances of the myth and his ability to recognize varieties of it in so many writers through the centuries is far from common. What is most distinctive, however, is Lawler's argument that this myth or "central poem" most incarnates itself, in poetry, in certain intimate or even technical aspects of pattern and form in verse. The argument is the familiar one that it is human nature to find these patterns beautiful and that we find them beautiful because they are in resonance with the transcendent or, in Gerard Manley Hopkins's phrase, are in themselves, whatever content they express, "word of God, news of God." The originality of Lawler's book lies in its detailed investigation, in the six central chapters, of a wealth of examples of such structures. The structures express, of course, not only a person's glimpses of transcendence but also the hesitations, impediments, obduracies in the middle of the journey of descent and return. "Those [six] chapters treat of, in order: chiasm and parenthesis; enjambment; coda of reversal; coda of irony; prepositionalizing, refrains, journey motifs; mono-polysyllabic collisions and oscillatory imagery."

That may sound forbiddingly technical; but in fact Lawler's book is lively and readable throughout, since his method is that of the presentation of abundant example through extensive citation, followed by discussion from the point of view of the topic of the chapter. The reader comes to understand enjambment, or whatever, and the way it embodies some aspect of the "heuristic myth" by being shown examples in operation in case after case. *Celestial Pantomime* is, among other things, a marvelous miniature anthology of passages, citations, even complete poems. These are drawn from the whole range of Western literature, though especially from English and American poetry, and within that, especially from Renaissance poetry—Spenser, Herbert, Milton, Herrick, and the rest—and from the poetry of Romanticism in England and America—Wordsworth, Dickinson, Hopkins, Charlotte Mew, Robinson Jeffers, Stevens. Lawler's intimate knowledge of the work of all these poets is impressive, as is his sympathy, taste, tact, his evident joy in quoting and discussing them. He is, in the best sense of the word, a connoisseur of poems. The best part of *Celestial Pantomime*, as of all such books, is Lawler's presentation of *his* way of reading all these poems, his journey through the country named English and American poetry, with some crossings over the borders into French, German, Italian, Latin, and Greek.

Nor are these readings presented in a purely literary vacuum. *Celestial Pantomime* is interwoven with an amazing range of apposite allusions to secondary critical works, to philosophers, theologians, sociologists, anthropologists, scientists. Lawler is widely read. He moves at ease within an encompassing context in which the reader may encounter a little bit of everything in a given paragraph. Two characteristic pages (pp. 40-41), for example, move easily sideways from Yeats to Rilke to Stevens to Crashaw to Lucien Goldmann to Pascal to Gilbert Ryle to Merleau-Ponty to Donne to Pico della Mirandola to James Wright to Rupert Brooke, and the next page throws in Carew, Jonson, and Leonard B. Meyer (the musicologist) for good measure. Here is God's plenty, as I have said, and then some.

The preconception justifying all this rapid lateral movement from example to example, often through the citation of four or five names in a single sentence, is given in an aphorism from Anaxagoras Lawler several times quotes: "Everything is everything." It is characteristic of Lawler's mind and of the assumptions of his book that in one of the places, a footnote, where this gnomic saying is cited, it is followed by four more examples of the "same thing." The principle that "in poetry only one poem proves another," says Lawler, is "rooted in a text of Anaxagoras I have already cited: 'Everything is everything'; it is the Scholastics' 'per simile simile percipiens,' in Peirce's 'The sense of a symbol is its translation into another symbol,' in Bachelard's 'L'image ne peut être etudiée que par l'image,' and lastly, it is the guiding principle of Harold Bloom's critical achievement."

Josephine Jacobsen

Distance

Distance is our quack doctor.
I marvel at ants
busily skirting their dead,
and pigeons, chattily convening by
a pigeon's body. Freedom
from touch! cries something envious.

I found a child's skin, breathing,
wrapped over bones, a look
straight from the pit, lying on my doorstep.
My car-keys in my hand, stepped over it
and while it still breathed, went straight
into the bright here.

It was not on my doorstep. Space
held it; over a sea, perhaps.
In time, we were exact; together.
It shared my instant. It was distant.
Distance was all I needed from the ant.

Saints can't grasp distance.
It eludes their sense
as though all theres were here.
I survive shame; and feel distance
gently gently as a priceless pain-killer
locate, and disconnect, reality.

JOSEPHINE JACOBSEN's *sixth volume of verse,* The Chinese Insomniacs, *will be published this month by the University of Pennsylvania Press.*

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The sweep is breathtaking. From Anaxagoras to Harold Bloom in a single sentence, and the claim that "one poem proves another" of course already alludes to Wallace Stevens's "A Primitive Like an Orb." The danger of operating on this principle is obvious: a flattening of all individuals into a bland critical ambience in which all cats are equally white or into a vague Jungianism in which all is archetype and all archetypes mean the same thing. Nor does Lawler wholly escape from this danger. The reader wants occasionally to draw him up and to say, "Hey, wait a minue. Everything is not quite everything, whatever Anaxagoras said. There is a fundamental difference between what the Scholastics were saying and what Peirce was saying, and the difference goes all the way down to the bottom, down to the fundament in the thought of each kind of thinker, or, in Peirce's case, to the lack of ground."

Lawler is aware of this danger. In various ways he more or less successfully guards against it: by his emphasis not on concept or even on "image," but on the nittygritty or poetic texture: enjambment, semicolons, parentheses, and so on; by his emphasis on the way poetry is about the long journey "home," that is, as much about the interferences of the urge toward unity by the recalcitrant particularity of language and of the human condition as about that unity itself; and by his insistence that each of his allusions or citations must be put back into its full individual context by the reader in order to be understood more completely. One might express this by saying that Lawler sees man as incarnated in a body, in a physical world, and in the roughness of language. This conviction is a saving counter-point to his penchant for transcendence in the weak sense of allowing everything without qualification to be

FATHER JOHN A. COLEMAN, S.J., *is assistant professor of religion and society at the Jesuit School of Theology, Berkeley.*

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WALLACE FOWLIE's *most recent book is* A Reading of Dante's Inferno.

J. HILLIS MILLER *is a professor of English at Yale University.*

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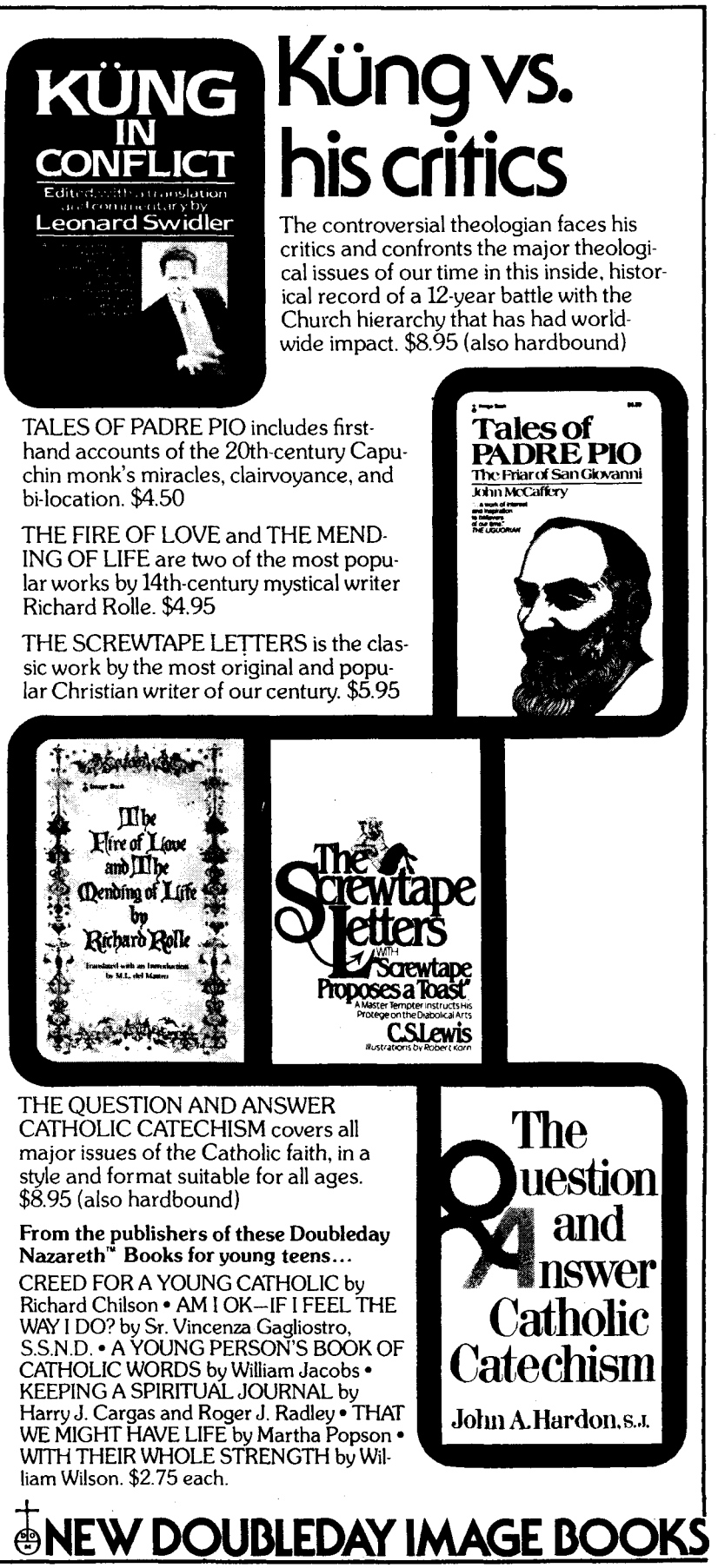
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everything.

> What I am trying to do is argue from . . . converging probabilities. By offering enough separate examples of, in this instance, a particular kind of enjambment, one is led to conclude that this structure seems to reflect some human reality, seems somehow to be congruent with what we think of as "human nature"—otherwise, there would be no basis for responding with pleasure to the structure in the first place. This pleasure is experienced immediately in the encounter with the structure, but its precise significance can be critically assessed only through the mediation of the "plot," "narrative line," "dramatic situation" of the poem itself.

This passage will give the reader a good idea of the strengths (and weaknesses) of Lawler's methodological assumptions (which are not the same thing, of course, as that abundance, tact, and connoisseurship which I have praised and which I unreservedly admire). Lawler here acknowledges the particularity of every example and acknowledges also the difference made by the full context of a given example of enjambment or of any other of the technical features of poetry he explores. Nevertheless, his rapid lateral movement from quotation to quotation, in his attempt to show that "everything is everything," does not allow him leisure or space to investigate just what difference that particularity and that contextual setting, in a given case, make. Lawler's strongest urge is toward the claim that each example is a version of the same archetype, the original matrix or die (as the word suggests) which forms all the examples and which makes them similar in form.

For Lawler this isomorphism counts most as evidence of the universality of human nature and of the force of the "original heuristic myth." As I have said, another critical temperament might want to explore the contextual particularity more fully. He might perhaps want to argue that the difference goes all the way to the bottom. If that were the case, then the archetype would not be an original forming matrix but an induction from the particulars, something existing only as a projection from them. The conflict these days between these two tendencies of thought forms the life or liveliness of debate in literary studies and in the humanities generally. The remarkable value of *Celestial Pantomime* is to have demonstrated so generously the still continuing productivity of one of these tendencies when it exists in a form scarcely inhibited by the other.

Dead dream & unbearable reality

BURNT WATER

Carlos Fuentes

Farrar, Straus & Giroux, $11.95, 231 pp.

N. E. Condini

ONE can summarize the main concern in Carlos Fuentes's latest and quite engrossing book, *Burnt Water*, as the conflict between old and new Mexico, nobility and servility, prehistoric gods and modern idols of money, greed, and success. His Mexico City setting bears in fact an astonishing and I believe deliberate resemblance to William Faulkner's fictional Yoknapatawpha, just as the juxtaposition of the ancient values and the new "snopesian" incivility brings to mind typically Faulknerian themes and attitudes.

With a few exceptions, represented by recollections of childhood, adolescence, and youth, all the stories are about dream and reality, the elating legacy of the Revolution and the tawdriness of today's world of Coca Cola ads, gas stations, poisoned food and shantytowns. The clash reverberates to become a cleavage in manners, a "Tuchmannesque" Q versus non-Q tug-of-war between democracy and possession, egalitarianism and vulgarity, spontaneity and pomposity, passion and lust. This clash between a dead dream and unbearable reality takes on several shapes: in its most delicate

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utterances it is a feeling of nostalgia for disappearing beauty, decency, and honor ("Mother's Day"); in its crudest statement it is a longing for death that brings to mind the Spanish Inquisition and the Mexican morbid counterpart to the (Catholic) denial of the body ("The Son of Andres Aparicio"). In "Mother's Day," for example, (as in "These Were Palaces" and "The Old Morality") a boy reviews the performances of three generations, from the old days of Mexico's fight for independence to today's lusterless, non-heroic age. The towering figure to inspire the young man in the story is grandpa, General Vergara, a man of fire patterned, it would seem, after Robert Lowell's portrait of his own grandfather in *Life Studies* and Faulkner's Sartoris in *The Unvanquished:*

"Seeing him from that distance, almost motionless, I thought he looked like a desert plant. Green, rubbery, dry as the plains of the north, a deceptive ancient cactus harboring the sparse rains . . . In his photographs, on horseback, he loomed tall." His exploits are set against the background of a city full of pettiness and thievery, religious fanaticism and political terrorism, inhabited by a hybrid generation exemplified by the boy's weak and irresolute father. A quarrael between father and grandfather is eventually the key to a revelation of characters which is also a mirror of contemporary Mexico, caught between a dream that is ended (the Revolution) and a reality that can't be lived (today's millions of poor in Mexico City).

A thrilling revelation of characters also unfolds in "The Two Elenas," where, thanks to Margaret Sayers Peden's exquisite rendering the author's gift for sensitive description comes into full play. Fuentes is indeed a master of female portraiture. Much more than the poverty scene, as one critic has pointed out, he projects an aristocratic culture that would rather go back to Aztec times than compromise with modern Mexican ugliness. But Fuentes is too intelligent not to see the pitfalls of a purely decadent or aesthetic conception: in "The Doll Queen," and especially in "The Mandarin," the futility of trying to live only in the past is excruciatingly explored and ultimately criticized. Federico Silva tries, in "The Mandarin," to preserve all the beauty and refinement of the past in a congealed form, in a life that's a work of art. He dresses, speaks, moves like an aristocrat. He wants to be found dead "to the strains of Schubert's 'Unfinished Symphony,' with Dickens's *The Mystery of Edwin Drood* open beside him"; but the dream falls upon itself: instead of the prefigured, flamboyant ending, Federico is butchered by three punks on his estate. His dream of the past has resulted in death. As death is the arbiter in the incestuous story of a "pure Soul," so death is the ghost of "In a Flemish Garden." Death is what the decadence of the past causes. It is also the source of the brutality of the present in the didactic "The Son of Andrés Aparicio." In the middle stands the omniscient author, alias the young boy or young man in many of the eleven short stories. To him, things remembered take on the quality of eternity because they are devoid of material interest: they are pure and irretrievably lost. Modern things have instead the deformity of sores, or they wear the stench of poverty. But they have to be faced, whether we like it or not. It is our life, this life, and escapism will not help solve the problems of Mexico. It will only lead to ostracism, madness, or death.

Correspondence

(Continued from page 578)

ment of the show catered to a prurient curiosity concerning monastic celibacy. Again and again the voice of the interviewer insisted on bringing the conversation back to this topic. No effort was made, however, to alert the audience to the distinction between the celibacy of priests and that of monks.

Many priests in the Roman Catholic church do not choose celibacy as such.

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Yet, present church legislation links the priestly office with celibacy. For some candidates celibacy is merely a price to be paid. They put up with it, simply because they want to serve as priests. But monks freely choose celibacy as an integral aspect of the lifestyle they desire. This does not mean that they find celibate life easy; no more so than householders find married life easy. They find it not easy, but fulfilling.

What *Commonweal* calls a "well-known crack in modern Catholic apologetics" may refer to clerical celibacy. It does not refer to the celibacy of monks. Monks want to be celibates. For thousands of years, men and women within and without the church have found the celibate path a way to human happiness and wholeness. The world of sex would be far less thrilling than God made it, if we humans were deprived of this free choice.

It is a choice perfectly compatible with what you call "cheerfulness and love of the earth." The monastery at Spencer offers living proof of this, but the TV version of it did not.

People come from far and wide to refresh their hearts by the joyful singing of psalms and by the Eucharistic celebrations at St. Joseph's Abbey. Why did we see so little of it on TV? "The point was lost in the script," you admit. Well, too bad!

And what of the "authentic, earth-moving experience" for which so many are looking to the monks, as you say? They could find it with the Trappists, to be sure, but hardly on TV.

Perhaps there is a lesson monasteries must learn about the media.

"It was past time," you wrote in *Commonweal*, that a network should give to a Christian monastery equal time with "oriental gurus, cults, and the spirituality of hot tubs." Well, your wish was fulfilled. But you should have wished also for a capable producer to fill that slot of prime time with a worthwhile program. Where was Ronald Eyre of BBC's "Long Search" when "Monastery" happened? Where was Roy Bonisteel of CBS's "Man Alive"? Given ninety unsuspecting monks, forty hours of taped interviews, and the most commonplace misconceptions about monastic life, most anybody could have produced this program, which, taken at face value, amounts to the monastery's official declaration of spiritual bankruptcy.

Thirty million viewers are supposed to have wasted ninety minutes watching "Monastery." (It adds up to more than five thousand years of wasted TV time!) Fortunately, we tend to see what we'd like to be there, and many of my friends found something or other that raised the show above a total loss of time. The very fact that so many were interested in the topic is encouraging. Maybe they will turn to more authentic reports, like Thomas Merton's *Sign of Jonah*, Henri Nouwen's *Genesee Diary*, or Basil Pennington's *O Holy Mountain*. Fr. Basil is a monk of St. Joseph's Abbey, seen in "Monastery," but not heard from. Thomas Merton was not even mentioned. Yet, through his writings this monk influenced the lives of countless people beyond the confines of the church, because he spoke to the monk in each of us.

It was Merton who called monasticism "an instinct of the human heart." The thirty million who watched "Monastery" share this instinct with those whom you might be writing off a bit too glibly as followers of "oriental gurus." Let's remember that the historic Jesus is both guru and oriental, though we can come to discover that he is even more than that, if we dare follow that monastic instinct of our heart.

DAVID STEINDL-RAST, O.S.B.

Agony & ambiguity

Minneapolis, Minn.

To the Editors: Thank you for the Sept. 11 editorial on "The Monastery." It helped to underline the relationship between monastic life and all human life.

Many of us who watched the showing of "The Monastery" squirmed in our seats, trying to avoid the shocking contact with a pneuma that couldn't be missed. The monks of Spencer Abbey spoke from the hurricane of their own hearts and their words fell on an audience forced to walk into the stormy headwinds. My own sense at the time was that these men were stretching their hearts and their vocabularies to find words to describe a reality they know. As your review pointed out, the reality is the human, existential condition within which we all find ourselves—or get lost! It no doubt causes anxiety to look into the eyes of other human beings who, like ourselves, are searching for the reality that will propel us forward.

It is true that the setting of a monastery, with all of its routine and its character, allows the quest to be more explicit. I am convinced, however, that the words spoken by each of the monks were words echoed by all humanity throughout the centuries of time and toil. Monasteries have come and gone, national boundaries have broadened or disappeared altogether, but the same words are heard: "O God, my God, for you I long" (Ps. 62).

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Perhaps the showing of "The Monastery" failed to explain in a logical way the contemplative life or the rich heritage and traditions of the Cistercians, but it did explain the *human* way of life. And it is Good News to hear the ageless, boundless cries of humanity. Perhaps it is actually a bit of the divine that we are sensing.

I applaud the daring of ABC to show such an agonizing attempt to share a bit of monastic life. What came through, clear to me, was that we were also given a mirror image of all human life—agonizing as *that* might be! The doubt, the passions, and the personality quirks belong to us. Perhaps the agony is to own what belongs to us. We cannot escape the ambiguities and paradoxes of our lives, but we can own them, hold them, and move with them, and know that others have the same paradoxes . . . some even spend their entire lives looking at them "face to face."

ELLEN COLLESANO, O.S.C.
Poor Clare Monastery

Guns & race

Seattle, Wash.

To the Editors: I wish to respond, briefly, to E. G. Marquis of New Smyrna Beach, Florida, who finds himself in disagreement with *Commonweal* on the question of gun control [June 19]. I will not begin by saying that I find it difficult to believe that there are people out there who actually think that the one "consistent factor" determining a relatively high or low murder rate in the different regions in the country is "different races living together"; what I do find difficult to believe is his statement that "This is one of the few times I find myself in disagreement with *Commonweal*."

I've not carried out any surveys as he has. I have lived in several different regions of the country, including Montana, which Mr. Marquis cites as having a low murder rate and "little mixing of races." I was stationed there with the Air Force from 1961 until 1964 and one of the sordid memories I have of the place is that each time a group of us GIs went into town to have a few drinks at one of the local ginmills, we could count on being asked to leave if one of our number was black. There were few murders in Montana, certainly, what with slightly more than one hundred thousand people spread over the fourth largest state in the Union. What is so remarkable about that?

I was raised on the east side of Detroit. Anyone from that city can tell you of the hard-and-fast racial boundaries you will find there. To say the races "mix" in Murder City is ridiculous, and Mr. Marquis may want to check out the homicide statistics for the amount of "Black-on-White" crime; he'll find it insignificant.

For the past seven years I've lived in Seattle. Here the races *do* mix. Every day I see interracial couples of every kind imaginable. Seattle has been called America's most livable city partly because of the low crime rate.

I suppose that if I was to put my own prejudices to work, I too could come up with some oddball theory on regional and racial tendencies toward violent use of guns. I would immediately point out that Lee Oswald, John Hinckley, and Mark David Chapman are all male WASPs, born and raised in Texas; that James Earl Ray is a male WASP from Tennessee. So my theory is to outlaw guns in the old Confederacy, and keep them out of the hands of women and Palestinians living in California.

LEO BRADLEY

Church/world watch

(Continued from page 585)

calculus appears in the relationship of a liberal trade policy (providing market access for developing countries) and unemployment in vulnerable sectors of the domestic economy. This problem is further complicated by the way multinational companies can move productive capacities from high-wage unionized locations to developing countries where unions are restricted or outlawed. These transnational questions are just below the surface of the recent encyclical. The reponse to them will be a major contribution to the growing edge of Catholic social tradition.

J. BRYAN HEHIR

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